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TRADE AND DEVELOPMENT BOARD
Standing Committee on Developing Services
Sectors: Fostering Competitive Services
Sectors in Developing Countries
Third session
Geneva, 25 September 1995
Item 2 of the provisional agenda

ADOPTION OF THE AGENDA AND ORGANIZATION OF WORK

Provisional agenda and annotations to the provisional agenda

Note by the UNCTAD secretariat

I. PROVISIONAL AGENDA

1. Election of officers

2. Adoption of the agenda and organization of work

3. Ways of enhancing access to and use of information networks and distribution channels

4. Impact of progressive liberalization and of service imports on the development of competitive services sectors, and the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services

5. Progress report by the secretariat on the implementation of the work programme of the Standing Committee, with special emphasis on the preparation for UNCTAD IX

6. Other business

7. Adoption of the report of the Standing Committee to the Trade and Development Board.

GE.95-52923

II. ANNOTATIONS TO THE PROVISIONAL AGENDA

Item 1: Election of officers

In accordance with the arrangements for the Bureaux of the Standing Committees endorsed by the Trade and Development Board at the first part of its thirty-ninth session (c.f. TD/B/39(1)/15, para. 512), the officers of the Standing Committees "should be elected in accordance with the applicable rules of procedure, taking into account the principles of equitable geographical distribution and rotation." In line with those arrangements, the Standing Committee is required to elect a Chairman, five Vice-Chairmen and a Rapporteur to constitute the Bureau of its second session.

Item 2: Adoption of the agenda and organization of work

The provisional agenda for the third session was approved by the Standing Committee at its second session.[1]

A proposal for the organization of work of the third session is given in section III below.

Item 3: Ways of enhancing access to and use of information networks and distribution channels

The Standing Committee will have before it a report by the UNCTAD secretariat on "Ways of enhancing access to and use of information networks and distribution channels" (TD/B/CN.4/42). This report draws upon the contributions made in the Group of Experts, held in Madrid in January-February 1995 with the support of Fundación Española para la Promoción de la Información Automatizada (FUINCA). It focuses on those issues of particular relevance to the objective of increasing developing countries' participation in international trade in services.

Item 4: Impact of progressive liberalization and of service imports on the development of competitive services sectors, and the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services

The Standing Committee will have before it the report entitled "Impact of progressive liberalization and of service imports on the development of competitive services sectors, and the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services" (TD/B/CN.4/43). The report addresses those issues which are components of the dilemma faced by developing country policy-makers. That is (a) what steps should be taken to create an efficient services sector and attract investment to those sectors where such efficiency is deemed most essential; (b) how to ensure that this process is consistent with the strengthening of domestic services in sectors deemed strategic or those of potential export strengths; (c) how to enter world trade in services by overcoming current difficulties that prevent developing countries from expanding their participation in world trade in services, with emphasis on those aspects of the barriers to the movement of natural persons identified at the second session of the Committee.

Item 5: Progress report by the secretariat on the implementation of the work programme of the Standing Committee, with special emphasis on the preparation for UNCTAD IX

The Standing Committee will have before it the "Progress report by the secretariat on the implementation of the work programme of the Standing

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[1] Report of the Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries on its second session (TD/B/41(1)/10 - TD/B/CN.4/40, Annex II).

Committee" (TD/B/CN.4/44), covering activities under items (2), (3), and (4) of the Work Programme. It has been prepared with a view to facilitating the tasks of the Committee, as well as to seeking guidance from the Committee with respect to the future orientation of work in the preparation for the IX Conference in the context of paragraph 76 of Cartegena Commitment.

Item 6: Other business

Item 7: Adoption of the report of the Standing Committee to the Trade and Development Board

Paragraph 15 of the terms of reference of the Standing Committee states that the Committee "Shall submit periodic reports to the Trade and Development Board on its work". The report of the Standing Committee on its third session will be considered by the Trade and Development Board at its special session in December 1995.

III. TENTATITIVE ORGANIZATION OF WORK

Monday, 25 September	a.m.	Opening of the Session Item 3 of the provisional agenda **"Ways of enhancing access to and use of information networks and distribution channels"** Formal discussion on item 3
	p.m.	Item 4 of the provisional agenda "Impact of progressive liberalization and of service imports on the development of competitive services sectors, and the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services" Formal Discussions on Item 4
Tuesday, 26 September	a.m.	Informal discussions on difficulties faced by developing countries that prevent their participation in world trade in services.
	p.m.	Continue the Informal discussions
Wednesday, 27 September	a.m.	Item 5 of the provisional agenda **"Progress report by the secretariat on the implementation of the work programme"** Formal discussions on the progress Report
	p.m.	Item 6 of the provisional agenda **"Other Business"**
Thursday, 28 September	a.m.	Informal Consultations on items 5 and 6

	p.m.	No meeting, to allow time for the preparation of the draft report.
Friday, 29 September	a.m.	Idem
	p.m.	Adoption of the report of the Standing Committee to the Trade and Development Board

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TRADE AND DEVELOPMENT BOARD
Standing Committee on Developing Services
Sectors: Fostering Competitive Services
Sectors in Developing Countries
Third session
Geneva, 25 September 1995
Item 3 of the provisional agenda

WAYS OF ENHANCING ACCESS TO AND USE OF INFORMATION NETWORKS AND DISTRIBUTION CHANNELS

Report by the UNCTAD secretariat

Contents

		Paragraphs
I.	INTRODUCTION	1 - 5
II.	ACCESS AND DISTRIBUTION	6 - 11
III.	THE IMPORTANCE OF ACCESS TO NETWORKS AND DISTRIBUTION CHANNELS TO SPECIFIC SERVICE SECTORS	12 - 40
IV.	OPPORTUNITIES AND BARRIERS TO ACCESS	41 - 55
V.	DEVELOPING AN ACCESS STRATEGY	56 - 74
VI.	CONCLUSIONS AND OBSERVATIONS	75 - 82

GE.95-52596

I. INTRODUCTION

1. Under Item 3(e) of its work programme, the Standing Committee is requested to explore ways and means of enhancing access to and use of distribution channels and information networks in pursuing developing competitive service sectors in developing countries and increasing their participation in world trade in services.

2. While for some services distribution takes place through more traditional channels such as through the movement of goods or persons, an increasing variety of services can be supplied through information networks in that the information network not only provides information about the services offers, but constitutes the channel for distributing the service itself. The perception that access to global information networks and distribution channels had become a crucial factor in increasing their participation in international trade in services, led developing countries to press for recognition of the need to include issues relating such access into the Uruguay Round at the Montreal Ministerial Review in 1988. UNCTAD had addressed the phenomena of "networking" and "networked economy", and a spectrum of problems have been identified as impeding access to networks and distribution channels.[1] The Cartagena Commitment agreed that all governments should support the achievement of the access of developing countries to distribution channels and information networks.[2]

3. Article IV of the General Agreement on Trade in Services (GATS) provides for the possibility of facilitating the increased participation of developing countries in world trade in services through negotiated specific commitments relating to the improvement of their access to distribution channels and information networks. Article XIX permits developing countries, in providing access to foreign suppliers, to attach conditions aimed at achieving the objectives of Article IV, such as that of providing access to information networks and distribution channels. The Annex on Telecommunications also provides that condition relate to export of telecommunications services can be attached to the use of the public telecommunication transport network. For developing countries to derive effective benefit from such provisions, however, it is essential that they determine what is to be negotiated and with whom, and how can they strengthen their negotiating position in such negotiations.

4. Against this background, the Secretary-General of UNCTAD decided to organize an Expert Group charged with the task of assisting the Standing Committee to improve its understanding of the issues involved in enhancing access to and use of information networks and distribution channels. The Expert Group Meeting on Access to and Use of Information Networks was held on 1- 3 February 1995 in Madrid, with the support of the Fundacion para el Fomento de la Informacion Automatizada (FUINCA).[3] The Expert Group examined the issues related to access to distribution channels and information networks, focusing on trade in business services, professional services, audiovisual services and tourism. The Expert group specifically addressed the questions relating to the identification of (i) barriers which impede access to and use of information networks and distribution channels in sectors where such use and access is crucial to increased exports of services; (ii) possible actions to reduce or remove such barriers, including through (a) intergovernmental negotiations or government-private sector negotiations as foreseen in Article IV and Article XIX of the GATS, (b) autonomous action at the national level, and (c) supportive actions by the international community.

5. This report draws upon the contributions made in the Expert Group Meeting, and is circulated to the Standing Committee for the comments of members. It does not attempt to address the spectrum of issues involved in access to and use of information networks and distribution channels, but focuses on those of particular relevance to the objective of increasing developing countries' participation in international trade in services.

II. ACCESS AND DISTRIBUTION

6. Distribution is about accessibility of the product to users and consumers. The information network may provide information about the service being provided, while the service itself may be provided separately by the producer. To an ever increasing extent the information network is becoming the distribution channels for a variety of services. Furthermore, the distribution channel may also act as a medium of service production itself. This applies in some cases of information networks, especially those related to computer and software services, whereby the information network also acts as a medium through which the "finished product" (software or data) is stored and transmitted. Increasingly, distribution channels and information networks share one feature in common, namely, their dependence on telecommunications.

i. Activity-based distribution channels

7. One of the most traditional form of distribution channel is human interaction through established social and economic networks. Few businesses nowadays rely purely on word of mouth recommendations, but the "human relations" channel remains important. Information networks such as Internet, which is discussed below, make it possible to have people-to-people contacts without movement of persons, in fact, business application of Internet has been increasing in developed countries. An institutionalized form of people-to-people distribution networks are trade organizations, through activity-based interactions, such as through trade fairs, missions, delegations and exhibitions. Trade associations are the institutional means of consolidating interactions based on interpersonal contacts. The essential aspect is "participation" in the network. The link between downstream services of the market and "upstream services" e.g. the design of the product has been stressed in earlier UNCTAD documentation[4] where the information network is the distribution channel. This feedback can be quite rapid, assisting the service provider to adapt his product to the market.

ii. Multi-unit distribution network

8. Another type of traditional distribution channel is what can be described as multi-unit distribution network, typically of more well-developed industries. Many of these have a sectoral character, as in the case of banks, restaurants, laundries, hairdressers, etc. In other cases, the distribution channel may be multi-functional or multisector, for example, a hotel chain is a distribution channel for many different types of tourism and travel-related services. The individual units of the distribution channel within a sector may or may not be networked. They almost certainly are networked in a proprietary, chain store situation, but there may also be other looser forms of networks, such as through franchises, cooperative agreements, or trade associations.

iii. Public media distribution channel

9. The public media are important media of communication. Whether the content carried is commercial, such as news and advertisement, or non-commercial, such as literature or arts, the global media now provides an important network through which information is relayed to most corners of the world. Both the print media, i.e. newspaper, magazines and trade journals, and the electronic media, i.e. television and radio are subject to regulations various reasons. The media industries act as a distribution channel for the services of film, radio programmes, literature, news reporting, etc. are delivered.

iv. Computer-based information networks

10. As noted below, computer-based networks are now extensively used in most service sectors, in particular to support the global operations of TNC. The most popular types of networks are what can be classified as "corporate networks". These can be categorized into "intracorporate", "transcorporate" and "intercorporate" networks. The purpose of intracorporate networks is that of

coordinating day-to-day activities by enabling end-users within the same company to share information and processing capacity, while transcorporate networks take the form of links between a firm and its closer suppliers and partners. Intercorporate networks implement corporate alliances enabling corporations to share strategic information, technological know-how, cooperate in joint ventures etc., are aimed at affecting the environment in which a group of firms operate, particularly with respect to setting and implementing common information standard.[5] Many of the corporate networks are proprietary in nature, such as computer reservation system (CRS) of airlines, electronic financial services networks, and private business intelligence networks. Often the network is part of a range of industries which are increasingly integrated with each other. The CRS, for example, is closely related to the airlines, travel, hotels and conference industries, other than being a computer network service. Besides as a source of information, these networks are often also the means through which a service is transacted. Thus a CRS not only provides information on airlines, but offers booking of tickets simultaneously. Likewise, a banking electronic network not only allows bank details to be revealed, but also bank transactions to be effected.

11. The implications of computer-based information networks for foreign service providers differs depending on how such networks develop. Situations where each service provider is responsible for the development and operation of one's own proprietary electronic distribution network can put foreign exporters - especially those of developing countries - at a distinct disadvantage as such networks come to represent prerequisites for full market participation and therefore potential barriers to entry. By contrast, there are situations when small, remote providers can benefit disproportionately from the availability of publicly or privately provided electronic distribution networks that will work to put all providers on a more or less equal footing.[6] Another type of electronic network is trade data networks run by trade promotional bodies. Less proprietary in nature and hence more open to users, these networks are also less likely to be sector-specific, or to allow businesses to be transacted via the network. The "information superhighway" is emerging as medium for storage and exchange of information.[7] This is, in effect, a loose network of independent computer databases connected via telecommunications, the most famous of which being the Internet, a system of interconnected computer network which may be a storage or distribution medium for virtually any information. The World Wide Web is another protocol which allows information to be stored at one end of the Internet to be accessible through another end.

Box 1
Internet and Trade

The use of Internet for trade is expected to increase dramatically in the coming years. It is estimated that in the year 2000 Internet will be used to purchase $600 billion of goods and services world-wide, accounting for 8 per cent of the total goods and services purchased that year. Major telecommunications carriers in the United States and in Europe are extending their services with respect to the Internet. For example, MCI and BT are developing secure software for commercial Internet transactions, a platform to offer on-line business services using the World Wide Web, as well as high and low-speed Internet access, transport and consulting services.[a] MCI, which has provide backbone services to Internet in the United States for several years, is launching Marketplace MCI, "an electronic shopping mall", where small and medium-sized companies can set up electronic storefronts for $2000 to $3000 per month.[b] It is likely that Internet may increasingly be used for the transmission of advertising images to potential customers on account of its cost advantage, since the Multipurpose Internet Mail Extensions (MINM) enable an Internet message to encapsulate fax, sound and video. Virtual spaces on the Internet, where developing country firms can display their products, would be an important potential means for advertising and selling in international markets in the coming decades.[c]

Other commercial uses of the Internet include communicating with customers and suppliers, as well as accessing to specific on-line services. Commercial users can also join mailing lists to keep abreast of general issues affecting their industries, through mailing lists associated with topics such as technology transfer and country or industry specific studies or make use of on-line services such as *USENET News*[d] or *Internet Relay Chat*[e].

However, a number of external factors seem to affect the adoption of Internet as mechanism for increased trade. The issue of standards is becoming increasingly important, especially with respect to the convergence of the message handling systems of the Internet, interoperability among standards for electronic data interchange (EDI), and adoption of a world-wide set of standards for secure information coding (encryption) and user access authentication. Furthermore, governmental prohibition of export of encryption algorithms can seriously affect the potential of software developers in creating network intensive applications that can interact with the existing infrastructure of secure software products on the Internet. Finally, there is a need for information on specialized networks that could be of immediate interest to developing countries, as such information would be crucial for facilitating developing-country participation in the Internet.[f]

Multilateral efforts may be a necessary response to these problems, as the use of international standards, multilateral solutions to the problems posed by export restrictions on encryption software,and international arrangements for the provision of information on specialized networks for developing countries may warrant serious consideration.

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[a] Kenneth Hart, "Internet Envy: Carriers Seek A Piece in the Action", *Communications Week International*, issue 136, 12 december 1994.
[b] *Telecommunications Reports*, 28 November 1994.
[c] Jose Diaz, "Factors Influencing the Use of the Internet for Electronic Commerce in Developing Countries: The Case of the Dominican Republic", paper presented at the meeting of the Group of Experts on Access to Information Networks and Distribution Channels, UNCTAD/FUINCA, Madrid, 1-3 February 1995.
[d] USENET News is one of the largest, most comprehensive "news" systems in the world. Members of news groups receive messages and news articles according to their specific group profile.
[e] Internet Relay Chat is an interactive, real-time conversation system.
[f] See Jose Diaz, *op. cit.*

III. THE IMPORTANCE OF ACCESS TO NETWORKS AND DISTRIBUTION CHANNELS TO SPECIFIC SERVICE SECTORS

i. Business Services

12. In the business service sector, apart from computer related services which will be discussed subsequently, existing networks and distribution channels are mostly intra-corporate or at most trans-corporate (i.e. between the corporation and its clients/suppliers). Of all business services, management consultancy perhaps encompasses the widest range of specialized disciplines covering the strategic, operational, technological and organizational aspects of the business of its clients. Being a knowledge intensive service, information networks play a significant role in management consultancy's activities.[g] The largest advertising and marketing communication groups have been actively exploring ways to make better use of the new information technologies, attempting to improve the links between their various operations by introducing the latest hardware and software technologies to form their own electronic highways so as to ensure efficient transfer of knowledge and experience between their personnel in different locations and functions. A substantial investment programme in information technology has been launched with the aim of producing better results for advertisers and of communicating both inter-office and with clients in a more effective and timely way. Market research and public opinion polling services have been characterized by a rapid rise in the concentration rate over the last

decade. The major players like A.C. Nielsen, the GfK Group, IRI and Sofrès are intensive users of modern computing and telecom facilities and several have extensive proprietary networks. These networks provide the clients with direct desktop access to its marketing research information thus giving them a capability of timely external and internal data integration.[9]

- *Computer related services*

13. Information networks, especially telecommunication networks, constitute one of the modes of delivery for software services. The use of networks can function as a tool for increased participation in international trade in software services on account of the enhanced ability it brings to firms in altering production and delivery processes, in speeding up the delivery of services, and in internationalizing products and services. Software like telecommunications is an intermediate service in that it is often an input into the production and delivery of other services. There is a relationship of mutual dependence and reinforcement between telecommunications and software services while the state of telecommunication networks can be a crucial determinant of trade in software services, the latter provides a major input into the functioning of telecommunication services, e.g in telephone switching and videotex. Thus, difficulties with respect to one sector will have an impact on the other. For example, the unreliability of the quality of telecommunication lines as well as high tariffs in long-distance telecommunication have been cited by some developing-country firms as impeding them from making better use of the possibilities of remote data and software services provided by the use of information networks.[10]

14. The increasing use of information networks for service delivery have enabled developing country service providers in the software and data processing sectors to gain new market opportunities. Remote data entry, data processing, and software development are areas where new opportunities have arisen. Some of the developed-country airlines have transferred their accounting and other "back-office" services to developing-country locations, using data transmission via satellites.[11] Similar opportunities are being explored by financial services companies with respect to back-office operations such as credit-card transaction processing services and by mail order distribution companies in relation to order-processing services.[12] Off-shore work, in these cases, takes advantage of the different time zones and low labour costs, however, efforts have to be made to keep ahead of advances in technology which are making basic data entry functions unnecessary.

15. Software services can be delivered through electronic information networks - facilitating cross-border trade as an important mode of delivery. However, even in the case of software packages, remote data entry or remote programming, the extent of cross-border trade is limited. The reasons for this are:

a. The importance of access to local networks of distributors: Most of the software around the world continues to be distributed either by manufacturers or by large, independent software firms. They often give preference to their own products or to fast-selling packages. When a small firm manages to develop a successful software, larger firms often try to buy its outright rather than attempt to compete with it. Discrimination by large-scale software distributors as well as by equipment vendors pose serious difficulties for developing-country firms that wish to penetrate foreign software markets. All these make it necessary for software firms often to establish some commercial presence in their markets for effective functioning.

b. The importance of client/producer relationship: In custom-built software and systems integration, cross-border trade often functions not as a substitute but as complementary to other modes of trade. Much of the production depends on direct client/producer interaction, and sometimes the producer may even need to work directly on the client's computer. Off-shore development often requires the provision of on-site services

such as specification of functional requirements, sign-off on development plans as well as on acceptance plans, testing, and training. For exporters of software service, temporary mobility of personnel is crucial, and visa and work permit restrictions in certain target markets in developed countries have been perceived as serious obstacles to trade in software services by some developing-country service suppliers.[13] However, increased reliance on information networks for the delivery of software services can be one response to this problem. In the case of developing countries such as India, the main source of export earnings from the software sector is shifting from the provision of consultancy services through the temporary mobility of personnel to off-shore development work, India has allowed dedicated satellite links to be used by domestic software firms to provide an overseas customer with a software team which can serve as an extension of his own operations, using his computer installation, without having to set up business in India.[14]

16. Many developing countries have been using relationships with foreign firms as a means for enhancing local software capabilities. Several Asia-Pacific countries show examples of this. Republic of Korea has relied on joint ventures between global and local firms, while India has made use of subcontracting and personnel dispatching, also called "body-shopping", and exclusively export-oriented subsidiaries of foreign firms for increasing local skills as well as service exports.

17. Regulations prevalent in the country of the consumer can sometimes pose difficulties for off-shore providers in servicing their clients. For example, developing country firms can be impeded in the provision of off-shore information services to financial service companies, e.g. in custodial services, by high minimum net-worth requirements in the client's country. As this requirement is related to the liability to investors whose assets are being serviced, a possible solution could be an insurance requirement instead of a minimum net-worth requirement. Regulations that stipulate the processing of data within the country also act as impediments to the provision of data processing services off-site. There may be a need to rethink the entire issue of professional liabilities in the light of changes in technology and in the mode of delivery. Developing countries would also need to adopt appropriate regulations governing the use of general data networks[15] and network crime[16] so that a symmetries in regulation do not become occasions for barriers to trade.

Box 2

Developing Information Services: India's Case

Significant growth of software services in the past several years in India has led to development of various information industries such as revenue-accounting services for airlines, financial services back-room operations, mail-order processing and offshore publication. Also the economic reform process initiation in India in 1991 has created growing interest in India as a place to invest, and it has created an opportunity to Indian entrepreneurs to provide information on India in electronic form as electronic information-content. Two relatively successful examples are: (i) JURIS - A Legal Database of Court Judgements; and (ii) CAPITALINE - Corporate Financials On-Line. One of the major constraints to develop off-shore electronic information services is a high cost of data-communication links. The total cost of such links often cost some $ 120,000 per year. High telecommunications tariff is also cited as a constraint to develop information services in India.

Development of information services raises some questions on legislative aspect such as: As general data networks are constructed, what are the liabilities of the network provider? Should it be liable to a service provider using that net for loss-of-profit? Who is liable for incorrect information received by a user? What if there is malicious use of a network such as by a hacker who steals passwords or credit card number? In the absence of a low governing data networks, i.e. liabilities and rights, these issues could become caught up in years of litigation and evolve painfully and slowly as each court case decided.

It has been pointed out that just as there is need for legislation, there is also a need for training in detection of network crime and for the establishment of mechanisms for the award of penalties and restitution to victims of crime and fraud.

Although the information for this box was drawn from India's experience, most countries have not sufficiently addressed questions of liabilities and rights, as well as adequacy of penalties or restitution to victims. In the OECD countries, legislations in this regard has been reviewed, however, it is an evolving process. Development of information industries progresses in developing countries, necessity of enhancing legislative aspect on data networks becomes urgent.

Source: Prakash Hebalkar, op.cit.

ii. Professional services

18. Professional services typically involve knowledge and skills that respond to the needs of producers, consumers or both, and are usually restricted to licensed professionals such as accountants, auditors, lawyers, etc. The large accounting firms and engineering consultancies providing services on a broad international scale are intensive users of information networks. However, it appears that the application of such networks by law firms is limited except for a few large law firms practicing internationally. Use of electronic computer information network for common number, electronic library, video conferencing and electronic-mail is a way of expanding business linking partners and clients domestically and abroad. An elaborate intra-corporate network helps them to achieve coordination and a learning effect between professionals spread over the world. The networks for example allow them to check whether similar problems have already been dealt with elsewhere in the company and how they were solved. Firms can retrieve information in various areas from databases held by national and international institutions such as Library of Congress, World Bank. The development of national information networks would be an important step in enabling professional service firms to make effective use of network culture. Governments may have to initiate projects for building up national databases with the appropriate critical mass, or provide a profit maximizing legal environment to let the private sector compete on developing such national data bases.

19. The main difficulties that developing countries face with respect to accessing and using information networks and distribution channels to increase their participation in world trade in professional services result mainly from a shortage of technological, financial and human resources. Association with TNCs remains the major mode of technology transfer and market penetration in the case of several professional services such as accounting, legal consultancy, etc.[17] Although auditing and accounting are intensively local affairs, requiring detailed knowledge of local rules and regulations, TNCs appear to have a major competitive advantage over local firms. This is partly due to the more advanced level of their specialized skills such as consulting and to their ability to buy and apply information technologies, but reputation - the brand name - seems to play a major role in this.[18] Collaboration with such firms may be a way for developing countries to penetrate distribution channels in such cases. This is particularly relevant in accounting services where large international firms often deliver their services by attaching their name to local products and local providers, with most of the benefit going to local partners, in a form of multi-unit distribution network. Since such collaboration involves employment of local personnel, it often entails transfer of technology and skills and their eventual diffusion through "job-hopping".

20. Questions of telecommunications infrastructure may become even more relevant as an increasing number of multinational providers of professional business services will acquire their own intracorporate communications systems with their subsidiaries or branches in developing-country markets, for example through satellites, thus overcoming the shortcomings of the public

telecommunications systems. Developing countries wishing to expand their service exports need to build up their basic and value added telephone infrastructure to remain part of the global market. Late-comer countries face advantages and disadvantages with respect to telecom infrastructures. On the one hand, mobile telephones, which are quicker and cheaper to set up than land lines, while fibre-optic cables, that cost the same as copper-cables, have much higher capacity. On the other hand, the start-up phase of information-networking with new telecom services such as EDI and E-mail can prove to long and expensive.[19]

iii. Audiovisual Services

21. The film industry is particularly dependent on access to distribution channels. Virtually all production costs are incurred in turning out the first copy of the film. The subsequent return thus depends almost entirely on how and when the film is distributed. There are about 65 film-producing countries in the world, with a total output of 4,000 to 4,500 films per year.[20] More than half of these are produced by Asia-Pacific countries. Hong Kong is the main exporter of films in the region, especially for Singapore, Malaysia, Taiwan province and the Republic of Korea. Distribution of films involves several parties, namely, the producer, distributor, exhibitor, and exporter/importers if the film is internationally traded. However, for the total exports of films in the world, the United States is the major exporting country.[21] Being in a position to control the timing and duration of film shows, distributors occupy a very powerful position in the film industry.

22. The biggest practical barrier to market access for developing country producers may lie in the advanced and highly integrated state of the media industry in Western societies. Here vertical and horizontal integration between production and distribution seems to pose the most serious impediment to new entrants, especially from developing countries, in accessing and distributing their media services products in developed-country markets. United States firms, which dominate the media product distribution market overwhelmingly favour domestic products because of their larger, lower risk market and because they frequently produce the products themselves. Furthermore, since the film exhibition market in the United States is organized around advances and guarantees rather than royalties, there are no incentives or even allowances to try out higher risk non-domestic products.[22]

Box 3

Integration of Production and Distribution in Films

Film industries are characterized by the integration of production and distribution (i.e. a firm both produces and distributes a product). According to the U.S. National Association of Theater Owners (NATO), ten exhibition companies owned about 65% of the exhibition screens in the U.S. in the late 1980s. Their profit concentration was much greater because the majority of these screens were in high grossing urban locations. Distributors also have informal agreements with the exhibitors they do not own to maintain a small number of exhibition chains whose large cash reserves allow them to pay the sizable advances required by the distributors. In Hong Kong, a film producer may have the finished product distributed locally through five Hong Kong distributors, who control most of the cinemas network in Hong Kong; or the product may be shown to buyers all over the world through exhibitions or film festivals. Typically, the international traders of films are companies which have long-standing contracts with overseas' producers or distributors. In some cases, the producer, distributor and trader belong to the same group, which has its own international network, e.g. Golden Harvest of Hong Kong. Because the amount of films that can be shown in cinemas is a limited, producers have to compete with each other for their films to be shown. In Hong Kong, the cinema network has the capacity to accommodates about 300 films per year.

23. While there are serious barriers to entry in industrialized countries, especially in the United States, the largest single market, the international market is growing rapidly with increased demand for media products. The ability to enter this developing international markets depends more on the question of scale than that of nationality. In order to tap the opportunity for entering the emerging markets, it is necessary to develop market intermediaries that can provide capital and access to smaller producers. Some alliance of developing country producers in forming such intermediaries should be considered.

24. In television programming too, the general tendency is for distributors to produce the products themselves, since programming is typically used or sold across distribution systems. If distributors develop their own programming, they can distribute it across their own networks and sell it to other systems at no additional cost and reap the additional revenues, whereas if they purchase imports, this would entail an additional cost each time they broadcast a film or a programme. Thus even when there is a potential market for imports to fill in programming slots, the integration between production and distribution seems to work against it.[23] However, the addition of new channels oriented towards broadly defined market segments, e.g. the Spanish or Chinese speaking populations in the United States may occasion the introduction of new imports. The segmentation of foreign markets and the demand for specialized programming have also resulted in an increase potential international markets for developing country products. Also, the advent of digitalization in telecommunications has opened a new way to transmit films to audiences, i.e. "video-on-demand" services through the telephone line.

25. Direct broadcast satellites, which transmit a digitally encoded signal directly to the viewers' homes constitute the most important broadcasting strategy for developing countries as they cover large geographical areas with their "foot prints" and enable the international delivery of video programming. Satellites also interact with cable systems, providing cable systems with a low cost way of networking thousands of cable systems. In Asia, the emerging trend is to use satellite services for pan-Asian television services to homes, businesses and hotels. The size of linguistic communities in Asia has forced program producers to develop programming specifically addressed to such communities, and this may result in increased opportunities for exports of television products for countries in the region. In Latin America, over the years, there has been an increased exchange of television programmes within the region and outside the region.

26. Satellite broadcasting is an extremely rapidly growing market, and is very likely that satellite broadcasters will respond to demand from segmented markets and demand for specialized programming. This implies that producers will have opportunities to develop audiences which have been difficult to reach via conventional cinema showings. In order to take advantage of the emerging opportunity, there have to be efforts to develop the niche markets by developing country producers.

27. Fibre optic cables are perceived by many as the base system for future information and media product delivery. This is on account of their revenue potential (subscriber fees, advertising revenues, and pay-per-view arrangements) and their potential interactive capacity. Telecommunication infrastructures once again prove crucial for the development of the television sector. Key issues facing developing countries in this respect are:

- encouraging and regulating media product distributor investment so as to maximize the revenue that can be used for basic infrastructural investments, including through differentiated regional initiatives, and

- development of multipurpose infrastructures that can handle a variety of service transactions including those in financial services.

28. Production capacity of audiovisual products need to go in parallel with swiftly expanding distribution capacity. In this regard, developing countries

need to be concerned with developing sufficient production capacity to match that of international distributors.

iv. Tourism

29. The tourism industry is a combination of various service industries. The success of the tourism service industries depends upon understanding the customers' expectations and offering the right combination of services, effectively bridging the gap between suppliers and consumers. This gap is bridged through the application of information technology, in the form of computerized global distribution systems that allow the display of availability, reservation and ticket emission for tourist products at an international scale.[24] It has become increasingly important for the producers of tourism services to have access to such distribution systems to participate effectively many segments of the tourism market. As the global distribution systems evolve and compete with one another, the range of services they offer have multiplied. Beginning with reservation of air tickets, and having extended to hotel bookings, ferries, tour operations and other services, these systems often provide the travel agent with back office accounting and management services.

30. There are information and network services providers who supply their services to clients in a variety of sectors in tourism-related activities. For example, SITA operates one of world's largest international data networks, providing an extensive range of telecommunications and information services to a broad customer base that includes international airlines, major reservation systems, large hotel chains, tour operators, airports, transport companies, multinational organizations, and car rental firms. Its services include a wide range of telecommunications products, mobile air-ground communications, and airport services.

31. Computerized reservation systems (CRSs) provide on-line facilities for travel agents to make airline reservations and issue tickets. The systems are owned by a few international airlines. The first CRS started in the United States after the deregulation of the airlines industry in 1978. As a sophisticated distribution channel, CRS provides an information network to enhance the industry's competitiveness. The use of CRS has revolutionized operations, improving and speeding up all activities including the booking of flights, car rental, tours, hotels, and other related tourism services. The convergence of the CRS with the physical network of travel agents offers the consumer with more choice and better service more efficiently. For the travel/tourism industry, the results of the CRS is conclusive: It is a positive development which has brought about increasing number of the customers, market share, revenues, and enhanced performance of industry sub-sectors. Through CRS systems, new products and services are constantly being developed.[25]

32. The early years of the use of CRSs, however, also evidenced a number of anti-competitive practices including a bias in display in favour of the owner airlines. Although airlines and CRS systems are often legally separate entities, in practice CRS is controlled by the large airlines and hotel network. ICAO listed the following among possible barriers to trade that could result from discriminatory behavior on the part of CRSs:

- priority accorded to the display of information of certain airlines,
- abuse of code-sharing,
- unreasonable contractual conditions with certain travel agents for displaying their products, and
- technical and commercial obstacles for limiting information on certain countries.[26]

33. United States in 1992 and the European Community in 1993 enacted legislation to ensure neutrality of information in the display of CRSs. However, subsequent studies have pointed out that although the display is neutral, there is a "halo" effect generated by the CRS in favour of owner airlines, through the volume of supplementary business generated by the CRS and by the use of training

methods that favour reservations by a certain company.[27]

34. Mega companies such as American Express which have extensive outlets, will have better bargaining power for use of the CRS. As a result, they can often obtain better terms on charges and preferential positions on the CRS screen. This is not the case for small companies. The problem will be even greater for small firms in developing countries, where lack of capital and technology prevent them from buying into and making effective use of CRS systems.

35. Local suppliers without access to international distribution networks are seriously disadvantaged in competition. For example, the inability of small hotels to be represented in travel agent database is an important case. Travel agents rely on computer databases as referral guide and they receive commissions based on using these data bases. Firms that are not listed are not worth investigating because they do not produce a commission.

Box 4

Commission Regulation (EC) No. 3652/93 on Computerized Reservation Systems for Air Transport Services

Regulation (EC) No. 3652/93 is to ensure that no discrimination exists on access, display, information loading, fees, conditions to participate in and terminate the participation in computerized reservation systems (CRS), among parent carriers, participating carriers and system vendors. Moreover, it is to ensure that competition among CRS exists in an oligopolistic market and that subscribers are able to switch from one system to another at short notice without penalty. The core aspects of the provisions include: (i) allowing any air carrier the opportunity to participate, on an equal and non-discriminatory basis; (ii) prohibiting to attach unreasonable conditions to any contract with a participating carrier; (iii) allowing a participating carrier to terminate its contract with a system vendor on giving notice; (iv) ensuring displays generated by a CRS to be clear and non-discriminatory; (v) obliging a system vendor to make any of the distribution facilities of a CRS available to any subscriber on a non-discriminatory basis; (vi) prohibiting the system vendor to enter into any agreement with other system vendors with the object or effect of partitioning the market.

The Regulation entered into force on 1 January 1994 and will expire on 30 June 1998.

36. Small suppliers of tourism products, especially from developing countries, face a large number of difficulties in accessing to using of global distribution systems. Firstly, as late comers in the market, it is virtually impossible for developing country firms to create a new global distribution system due to the critical mass necessary for the launching of a system taking advantage of the economies of scale. In setting up a system, experience in reservation, technological mastery and financial means are crucially important. Secondly, although regulations require that the display of information is neutral on CRSs, the system tends to work in favour of bigger airlines that have larger number of flights. Developing country airlines, and smaller airlines in general are less frequently present on the screen. Furthermore, small airline and tour operators find the booking fees of the computerized reservations systems high as they are unable to take advantage of the reduced fees that arise from larger number of bookings. Here, facilitators - in the form of intermediate firms or associations of small users - could play an important role in linking themselves to the reservation systems and making all the bookings for their subscriber firms, thus taking advantage of the reduced booking fees that come with larger number of bookings. The government can set an appropriate legal framework to foster the development of associates or subsidize aspects of their operations as necessary. Such associates could cooperate to sponsor regional marketing shows to compete with the domestic shows in industrialized countries, which are dominated by large firms.

37. Producers of tourism products increasingly use national distribution networks which are connected to global distribution systems. This is less expensive, and travel agents are able to access the information through multiservice terminals that allow the user to access a variety of information sources using the same terminal. Start in Germany and Savia in Spain are examples of this. The development of national distribution channels would be an important step for many developing countries to negotiate effective access to international information networks in this area.

38. The final sale of tourism, products in several developing countries is currently being handled primarily by international tour operators who contract hotel rooms from domestic hotel and resort owners in advance of the tourist high season. Hotel owners do not have the resources to invest in international advertisement campaigns and depend on tour operators for the resale of rooms in the international market. This gives tour operators an upper hand during negotiations as the operators basically set the price and conditions. Information networks may provide developing countries to present and sell their products to an international audience. As the end-user begins to increasingly access the service providers directly over a highly interactive media interface, the role of intermediaries begins to diminish. Virtual tourist applications on the Internet allows the potential customer to coordinate his travel needs through on-line network service, and this may provide small hotel owners in developing countries to establish direct contact with any Internet customer. However, in order to make effective use of such new trade opportunities, there is a need for change in attitudes towards networking as well as in the direction of proactive promotion policies. Here, once again, facilitators - in the form of intermediate firms or trade associations - may have a useful role to play.

39. To participate effectively in the international tourism market through information networks and distribution channels, developing countries may need to take into account the following imperatives:

- enhance the tourism products that can be traded through global distribution systems, including through the improvement of necessary infrastructures and strengthening of human resources,
- develop commercial agreements of global distribution systems through local partnerships, e.g with local airline companies who have close knowledge of local market conditions and enterprises,
- seek at an international level solutions to the problem of booking-fees (one such possible solution may consist in the travel agents paying for the bookings and the tourism service providers being free to reimburse them through a system of commissions)
- seek direct connections with the airline companies through "direct connect sell", when such facilities become available, and
- foster firms or associations that facilitate the participation of small tourist operators in global distribution systems by functioning as intermediaries."

40. One of the areas where multilateral efforts may be necessary would be the standardization of the electronic means of distribution of tourism services. There is a pronounced need for standardization of interfaces and of systems so that the cost of linking to a global distribution system can be reduced. Standardization with respect to the quality of distribution provided by the systems is also necessary. If true globalization of distribution systems is to be achieved, multilateral efforts would need to address making such systems accessible to countries with weaker buying power.

IV. OPPORTUNITIES AND BARRIERS TO ACCESS

i. Opportunities

41. The globalization of production has created new opportunities for developing countries to increase their participation in world trade in services through information networks. Globalization has meant that the phenomenon of the

"externalization" of services production, which had been examined in earlier UNCTAD studies[29] is now taking place on a global scale. This provides the opportunity for many developing countries to become involved in the supply of a variety of "backoffice" services, among others. Their comparative advantage in this respect lies in their ability to supply what earlier UNCTAD documents have termed as "low cost high tech",[30] and being able continually to upgrade both their skill and technical infrastructure as more simple data entry tasks are rendered obsolete through technological advance. It is noteworthy the European Commission has predicted that the vast majority of new jobs over the next decade is likely to be created in service sectors feeding the information infrastructure.[31] Upgraded skills and technology transfer are both prerequisites for and results of effective access and participation in the networks. As the TNCs expand their corporate networks around the world as a means to penetrate and control markets in developing countries, it is essential, if developing countries are to translate the potential benefits of globalization into concrete economic benefits, that they devise means to gain access to these same networks so as to supply their own services along the same networks. At the same time the Internet, and the Information Superhighways may provide the opportunity for developing countries to export services outside the proprietary networks.

42. Supplying services through the cross-border mode via networks enables developing countries to export labour intensive services without facing the difficulties involved in the movement of labour across national frontiers. However, as indicated above, the movement of persons is often an essential complement to the supply of network services and the progressive liberalization of this mode is essential for developing countries to effectively extract benefits from the globalization process.[32]

43. It would appear that enterprises, even in the United States have been slow to adopt their management styles to effectively make use of the possibilities presented by networking and to use open networks, such as Internet, to supply their services, rather than just information about their services.[33] Developing country firms which can quickly adapt to this environment may be able to exploit new market opportunities.

ii. Barriers

44. A major problem facing developing countries in entering world markets in many service sectors has been the dominant position and integrated nature of the TNCs. It can be noted that barriers to distribution channels in audio-visual services and computer services in industrialized countries appear increasing as a result of progressive integration of producer, intermediaries and outlet. This poses a serious problem for developing country-firms in these sub-sectors, which do not possess financial means to establish their own distribution channels in these countries.

45. The possibilities presented for anti-competitive practices when control of the distribution channels is in the hands of the producers of the product or a service being distributed has been a classic problem for Competition Policy and Anti-Trust authorities.[34] Where information networks have become distribution channels this has given rise to new challenges. As discussed above, this phenomenon became first evident in the operation of computerized reservation systems. Legislative actions by governments have sought to ensure fair competition among the computerized reservation systems and equal opportunity for the participants in the systems.[35] It appears that the possibility for developing countries to access and use computerized reservation systems has increased as a result of the legislative actions taken for fair competition, as well as the development of major international data networks by the airline association for telecommunications. However, it would appear that analogous problems are beginning to appear in other sectors, such as computer services where access to the network can be included in the purchase of software.[36]

46. Limited telecommunications capacity in developing countries is a major

difficulty in making effective use of information networks. The unreliability of the quality of telecommunications lines as well as high tariffs in long-distance telecommunications are major obstacles in this respect. These impede developing country firms from making better use of the possibilities of remote data and software services, which would be provided by the use of information networks. At the same time, due to scarce resources, developing countries often face a difficult choice between updating their technological infrastructures to make better use of new trade opportunities made possible by information technology on the one hand, and extending basic telecommunications services to wider sections of the population, both of which are necessary if developing countries are to effectively benefit from the promises offered by the information superhighways described above. At the same time, further technological development is impeded by weakness in the financial sector. This is especially critical in the construction of the telecommunications infrastructure.

47. Regulations in telecommunications and information service sectors can give rise to problems such as discriminatory practices in access of foreign and local service providers to basic telecommunications infrastructure, subjecting foreign service providers to unfair restrictions on use of equipment, user cost for leased equipment, more stringent licensing requirements resulting in unfair standards, limitations on interconnection to domestic networks. Barriers to cross-border information flow, such as restrictions on ground of data protection, restrictions on trade in software, and requirements to meet over-elaborate protocols of access. These regulations have the legitimate objectives of protecting national security, and ensuring the quality of telecommunications and information services. However, these regulations also become constraints to providers and users of information networks.

48. Lack of adequate intellectual property right protection was cited as a constraint as information which flows in electronic networks often has a high commercial value. Lack of protection, in policy or practice, of intellectual property rights, present constraints to the use of information networks, and their extension internationally, including into developing countries. The existing copyright laws of many countries, both developed and developing are considered to provide inadequate protection in the light of new digital technology.

49. The security of information can be protected through technical coding methods (encryption), which can render the contents of transmissions and files sent or stored on the Information Highway inaccessible to anyone but their originators and designated audience." However, such security devices may have an impact on trade."

50. Financial considerations are another important factor in making effective use of information networks. The prices are usually high for small users. For example, small airlines and tour operators often face prohibitive booking fees. Major information networks in the financial sector require high participation fees. Also, developing country firms can be impeded in the provision of off-shore information services to financial service companies by high minimum net-worth requirements in the client's country. Most of the developing-country users being small, this type of financial constraint acts as an impediment to the effective participation of developing-country firms in information networks and hence in international markets.

51. Lack of skills and necessary equipment to make use of emerging open-to-public information networks and the information provided by them constitutes a further impediment for developing countries. For example, the possibilities offered by the development of the Internet can be effectively used only if there are adequate facilities for training in the area of information technology.

52. Lack of transparency, not necessarily in terms of regulatory framework, but in the availability of information pertaining to the distribution and information industries, and to access to these industries is a constraint. In practical terms, non-availability of information is often the first barrier the

across-border service provider encounters. Developing countries face difficulties with respect to having information on standards as well as on account of the differences in standards followed in different countries or regions. As noted above, this is particularly relevant to algorithms and encoding rules to be used for encrypting information.

53. Export controls exercised by foreign countries of computer equipment and software, including encryption technology that are deemed to have military or security implications, was cited as a serious constraint in obtaining information on standard. Lack of international cooperation in, and experience in regulation of, the development of IVAN (international value-added network).

54. Language barrier appears as a very practical limitation for many service providers. Lack of Chinese software, for example, has been cited as one of the reasons why some companies do not use electronic mail to connect with their branches in China."

55. As has been noted above, the supply of service through networks does not obviate the need for the movement of persons, particularly highly skilled experts. Restrictions on the temporary movement of persons for training, representatives in trade associations can
adversely affect developing country exporters of services.

V. DEVELOPING AN ACCESS STRATEGY

56. Unlike in the case of goods, where distribution is a matter of physical presence, for services distribution is about *use* of a distribution network, thus, access to information networks and distribution channels means not only overcoming barriers to entry, but also being able to make effective use of the system. This point is particularly relevant for developing countries as the barriers identified in the previous section include not only " to access" but also "to use" information networks and distribution channels.

57. The question of encouraging exports of services for developing countries through access to and use of information networks and distribution channels leads to the three aspects:

- *effective access* to distribution channels and information networks;
- seeking a *balance* between market forces and regulated development in the telecommunications, information and distribution industries;
- a "market" and "*business* opportunity" outlook, rather than a narrow sectoral perspective.

58. These aspects will be the basis of developing an access strategy to facilitate trade in services for developing countries. There are two dimensions to such a strategy, namely:

- solutions which can be implemented *autonomously* within the developing country in question, either by its government or its private sector, or through a partnership between the two;

- solutions through *negotiations* with other parties, including international and multilateral trade negotiations, and involving both the private and the public sectors.

59. Such a strategy will, accordingly, address the following major areas:

(i) Development of the telecommunications infrastructure,

(ii) Strengthening of national capacities;

(iii) Achieving greater effective access to distribution channels and information networks through multilateral negotiations in GATS or in the context of regional agreements;

(iv) Seeking International Cooperation to overcome specific problems.

Box 5
Network Facilitating Services (NFS)

With the increased use of information networks for trade in services, a new range of services have emerged to assist end users in accessing these networks effectively. The development of such network-facilitating services (NFS) is crucial for improving the networking capacity of developing countries and in enabling them to take fuller advantage of the new marketing opportunities made possible by the use of information networks as a mode of delivery of services.

Local telecommunication networks and telephone networks in most countries also function as facilitators in providing access to networks. France Telecom developed an advanced public telecommunications network to facilitate networking by private enterprises who could "piggyback" on publicly provided networks. In Costa Rica the public company of telecommunications created a subsidiary, Radiografica Costarricense S.A. (RACSA), to develop a market and to commercialize value added services including network services.* RACSA provides preferential rates for access to the Internet for the academic and business community as well as for the government, and facilitates access to Internet by means of a software that simplifies access and navigation. URUNET, a firm in Uruguay has developed on line trade information services between Uruguay and Chile, using the public network infrastructure. Exporters and producers from different sectors access on-line services from Urunet to support their marketing decisions. Urunet has a "two-way agreement" with Uruguayan government, by which public information on regulations affecting trade as well as statistics on foreign trade are delivered to Urunet by the government, and the information is processed and made available on the computer within a short period of time. Urunet also operate as an intermediary for processing and updating information from different public databases and trade-news services.

The travel and tourism sector shows several examples of network facilitating services. While computerized reservation systems such as Sabre, Galileo, Appolo and Abacus provide facilities for the sale of travel and tourism products through the transmission of electronic information, a number of intermediate service providers such as Estrel in France and Sapia in Spain provide multiple function terminal which enable the user to access several networks through the same terminal. There are firms that supply network services to the global distribution systems. SITA, for example, operates one of world's largest international data networks, providing an extensive range of telecommunications and information services to a broad customer base that includes international airlines, major reservation systems, large hotel chains, tour operators, airports, transport companies, multinational organizations, and car rental firms. For developing countries, the development of network-facilitating services may be a crucial instrument of policy with respect to facilitating access to and use of information networks and distribution channels by service suppliers. This may take two forms:

networking services provided by the Government or by trade associations, which individual firms may make use of for accessing trade-related information, such as databases that provide on-line information on trade-related issues as well as on potential markets and customers; and

- services by intermediate firms that provide commercial access to information networks and distribution channels for other firms to enable them to communicate with or deliver their services to clients. For example, in the case of computerized reservation systems where booking fees are high for service suppliers, intermediate firms or trade associations may perform the role of facilitators, enabling small firms to benefit from the larger volumes of booking resulting from this.

* Alvarado Hugo, "El Fenómeno Internet en Costa Rica, Antecedentes y Situación Actual". RACSA has signed cooperation agreement with all the Central American countries and Panama, which allows the use of the networking capacity of RACSA infrastructures to develop value-added services, as well as the provision of specialized on-line data packages such as MAYAPAQ with GUATEL in Guatemala and NICAPAC in Nicaragua.

A. The telecommunications infrastructure

60. The dual character of telecommunications as a service in itself and as an infrastructure for the provision of other services, including value-added telecommunications services makes it difficult, therefore, to divorce the question of improving access to distribution channels and information networks from the issue of developing telecommunications infrastructure. For many developing countries, the question of the extent to which foreign capital should be allowed in telecommunications development is a difficult policy consideration. The main policy consideration for developing countries in respect of telecommunications would seem seeking that of a balance between the following:

- attracting foreign capital into the domestic telecommunications industry, through offering some advantages to foreign capital, e.g. equity participation;
- maintaining control over domestic telecommunications industry;
- encouraging technology transfer;
- ensuring that the resulting telecommunications infrastructure will not be discriminatory to users, and will offer equality of opportunity for access and use by both foreign and local users.[40]

61. The Annex on Telecommunications in the GATS has an important implications to the development of telecommunications in developing countries. It recognizes the dual role of this sector . It relates to telecommunications as a mode of supply and applies to all measures of a member that affect access to and use of public telecommunications transport networks and services. The purpose of this Annex is to ensure that any service supplier is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions for the supply of a service included in its schedule. The Annex strikes a balance between the needs of the users for fair terms of access and the needs of the regulators and public telecommunications operators to maintain a system that functions and fulfills public policy objectives. It also provides that a developing country member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services". Such conditions could also include those necessary to strengthen the domestic telecommunications infrastructure and service capacity of the developing country concerned and to increase its international trade on telecommunications services. Such conditions should be specified in the member's Schedule.

62. The aspect of universal service in telecommunications is a high priority for most of developing countries. In this regard, the issue of product and equipment standards poses an important aspect. Internationally agreed standards are preferable to national and subnational standards as the latter greatly complicate the achievement of effective access.

63. Policy-makers should be prepared for a host of legal and regulatory issues that may arise at national, regional and international levels, which will influence the way the telecommunications sector is restructured, as well as other related developments such as of software copyright, data protection, computer crime, electronic funds transfer and value-added services.

64. International cooperation should be enhanced for technology transfer and exchange of mutual experience. There should be more use of regional and multilateral forums to encourage the sharing of experience in planning, construction, and operation of telecommunications infrastructure and human resources development.[41]

B. Developing National Capacities

65. There are two major considerations in developing capacity for using information networks and distribution channels for developing countries:

(1) Technology being ultimately subordinate to market needs, the market will dictate what facilities should be developed to enable international electronic networking. The question is whether this process should, and how far it can be, speeded up through government involvement and regulation. Although there will be much merit in having the private sector develop and run information networks, the latter being a service industry itself, the "infrastructural" character of such networks suggests that there may also be some ground for active public sector involvement in establishing and running such information systems.[42]

(2) In the context of trade in services, it is important to harness appropriate foreign capital investment and technology in establishing information networks and distribution channels, this involves strengthening the negotiating position of domestic firms in dealing with foreign suppliers.

66. The solution to the problem of effective access is implied in the concept of effective access itself, i.e. that is in facilitating access, rather than creating new access channels. To give some examples, in the travel/tourism sector, small firms often find it expensive to "buy in" global computer reservation networks, and once on, difficult to use. One solution to this is to have some agency act as a representative to negotiate on behalf of small firms collectively in bargaining for better terms of access, and for a training service to be created to help users enter into and use the network.

67. Developing country governments and service producers should emphasize development of multiple distribution networks which will protect the advantage of local knowledge and service expectations and will integrate local products in international networks.

68. In particular, developing country governments and producers in audiovisual services need to be concerned with developing the commercial production capacity to match rapidly expanding global distribution networks of cables and satellite transmission, and to ensure that such distribution networks are used to distribute their own media products.

69. Strengthened trade associations could deal with some financial difficulties which developing countries face through negotiating pay-as-use agreements with the providers of value-added information networks and arranging alternative financial mechanism, e.g. creation of some type of insurance mechanism instead of a minimum networth requirement in the client's country. Another possible option for developing country firms facing difficulty in accessing and using networks would be to foster intermediate service companies to facilitate their access to global information networks and distribution channels. This may take forms of networking services provided by the government or by trade associations; or intermediate firms that provide commercial access to information networks and distribution channels to other firms. These network facilitating service firms are proliferating in developed countries[43] and emerging in developing countries where government support is often required.[44]

70. The enhancement of human capital through improved educational and training facilities, as well as through transfer of technology, is thus of major importance. National governments need continue their effort to focus higher education and to enhance computer-related infrastructures in universities. Governments and the private sector firms are called for to take advantage of opportunities provided in acquiring skills and technology through associating with advanced foreign service firms. At the private sector level, trade associations could explore ways to enhance their training function for small business firms to make their access to and use of information networks easier. The emergence of "facilitator firms" mentioned above either private or public could be stimulated as a key "producer service" in assisting enterprises to make effective use of information networks not only to obtain information but as a mode for exporting services.

C. Access through negotiations

71. The GATS negotiations are the appropriate forum for pursuing effective access, where such access is impeded by government regulations. For example, difficulties for developing country personnel to enter for the purpose of providing support services to software exporting could be addressed in the negotiations on movement of natural persons.[45] There should also be room for improvement in immigration and visa restrictions on temporary entry of personnel for the purpose of obtaining training in relation to information networks and distribution channel. The formulation of such requests may require further efforts to identify the measures concerned. The UNCTAD MAST data base could assist in this respect.

72. In considering effective use of Article IV, Article XIX and the Annex on Telecommunications of the GATS, for improving developing countries' access to and use of information networks and distribution channels, the underlying concept is that negotiations on specific commitments should enable the development of developing countries' own domestic capacity in the telecommunications, information and distribution industries, and facilitate their access to networks and distribution systems as a condition for access to their markets. A variety of such conditions could be applied, particularly with respect to the sectors examined above. For example, foreign software and audiovisual service suppliers could be obliged to distribute national products in their world wide networks, hotel chains could be required to provide reservation services for domestic hotels etc. The problem is not in devising the conditions, but to put them into effect given the weak negotiating position of most developing countries in dealing with foreign investors, particularly when such conditions may be resisted by the home countries in the GATS context.

73. One of the failings of GATS Article IV:1(b) is that there is no obligation on developed countries to provide such access but only to negotiate specific commitments. While developed country governments can argue that they cannot oblige private firms to provide access to their proprietary networks, they could agree to recognize the right of any developing countries to request such access as a condition of market access, regardless of what might be written in the Schedules of Commitments," and encourage "their" firms to cooperate. Another approach is for developing countries to specify in their schedules that access be linked to joint ventures which would give the domestic participant access to its foreign partners network.

74. More often, barriers take the form of business practices of developed country firms. In some cases, such practices may be contrary to competition or anti-trust laws and there is a need to "preempt" a "new generation" of network related anti-competitive practices. However, others might not fall into this category and would have to be dealt with through measures to strengthen the position of domestic service exporters. An example is that of computerized reservation systems, where developing country practitioners could negotiate through intermediate bodies such as trade associations to represent collective interests of small and medium enterprises. Developed country governments can be requested to ensure " good and fair practice", where the private sector could respond by developing self-regulatory codes of practice governing buying-in arrangement for CRS.

VI. CONCLUSIONS AND OBSERVATIONS

75. The increased tradability of services through information networks provides developing countries with a major opportunity to supply services through the cross-border mode. Developing countries can exploit their comparative advantage in labour intensive services while avoiding the difficulties faced in the movement of natural persons. It also provides them with the potential of using the access they provide to foreign suppliers by making use of the foreign supplier's own network as a means of exporting services. However, the problems which developing countries face in improving their access to information networks and distribution channels are complex as they involve the issues of

domestic and foreign regulations, proprietary ownership, and technical and financial aspects.

76. The development of telecommunications and computer-related infrastructures remain a priority. National governments need to pursue continuously the notion of "adequate infrastructure", which encompasses the issues of attracting foreign capital, maintaining adequate control over domestic telecommunications and encouraging technology transfer. The notion of "adequate regulatory environment" needs to be studied as well. Policy-makers should be prepared for a host of legal and regulatory issues that may arise at national, regional and international levels, which will influence the way the telecommunications sector is restructured, as well as other related developments such as software copyright, data protection, computer crime and electronic funds transfer.

77. It would seem that there might not be too much scope for enhancing access to networks and distribution channels through intergovernmental negotiations. The main application of GATS is to ensure that the qualifying conditions are such as to permit the effective implementation of Articles IV, XIX and the Annex on Telecommunications and to strengthen the position of governments and national firms in negotiations with foreign firms. The main role of developing country governments could be to take measures designed to strengthen the negotiating position of their firms, including by setting up national or sub-regional networks of service suppliers which could negotiate as a group with the foreign firms. In any case, effective use of "Information highways" to supply services could be a means of bypassing proprietary networks.

78. On the other hand, certain problems could be dealt with through the faithful implementation of GATS, particularly in the context of Articles VI (Domestic Regulation), and IV:2 (Establishment of Contact Points). There is a possibility that a whole new generation of anti-competitive practices and RBPs is emerging in the distribution of computer services through information networks. It is difficult to see how such problems can be effectively overcome without more structured international cooperation, perhaps in the framework of Article IX.

79. In negotiating commitments in the various service sectors in GATS, the following objectives could be kept in view: (i) the need of developing countries to develop "facilitator" institutions; (ii) priority in development of education and training in telecommunications and computer technologies; (iii) the possibility of reciprocal arrangements in the form of education and technology transfer; (iv) the utility of leasing and BOT (build-operate-transfer) arrangements; (v) qualification of commitments on national treatment in favour of domestic small-medium enterprises; (vi) providing contact points which should include information on access to distribution channels and information networks.

80. In order to improve developing countries' access of and use of information networks and distribution channels, the support of the international community is necessary in the following aspects:

(1) formulating strategies to develop national capacity to participate effectively in information networks, including through training programmes;

(2) exploring strategies for fostering intermediate service companies to facilitate developing country firms' access to global information networks and distribution channels;

(3) studying further financial difficulties which developing countries face in accessing to and using information networks and distribution channels, and exploring the possibility of reducing the financial burden;

(4) assisting developing countries in participating in setting up of global standards in connection with advanced information networks and electronic data interchange, and conforming to such standards;

(5) studying the implications of increasing commercial applications to the use of advanced information networks such as Internet for developing countries;

(6) adopting a set of principles which would facilitate the attainment of the development objectives of GATS Articles IV, XIX and the Annex on Telecommunications, in recognition of the weaker negotiating position of developing countries.

81. The international community should provide opportunities for developing countries to exchange information and experience in developing "adequate" telecommunications and computer-related infrastructures, including their regulatory environment.

82. The future work of the Standing Committee for improving developing countries' access to and use of information networks and distribution channels needs to focus on the aspects noted above. Given the complexity of the issue, the Standing Committee may consider providing direction as to the specific aspects of this issue upon which further analysis might be made.

1. UNCTAD, *Trade and Development Report 1988*, Part II: Services in the World Economy, UNCTAD/TDR 88/Offprint, p. 175. UNCTAD's *Trade and Development Report 1988* noted: "Information technology has had a varying impact on barriers to market entry. Entry barriers can be lowered where the infrastructure is used to market or distribute services, especially where access to, and the cost of, the network is shared by all users. Access to such a network can be a determinant factor not only in trade in services but also for providing services essential to trade in goods."

2. TD/364/Rev.1 p.29

3. FUINCA is a Spanish non-governmental organization whose objective is to carry out activities to promote the supply of electronic information services in Spain, bearing in mind both the opportunities offered by the European Single Market of 1992 and cooperation with Latin American countries. It signed a cooperation agreement with UNCTAD on 19 July 1994.

4. UNCTAD/TDR, op.cit..

5. "Progress Report by the secretariat on the Implementation of the Work Programme of the Standing Committee", TD/B/CN.4/25, 1 September 1993.

6. Albert Bressand, "Access to Networks", in UNCTAD, *Trade in Services: Sectoral Issues*, United Nations Publication, UNCTAD/ITP/26.

7. See UNCTAD Multimodal Transport Newsletter, No. 7, May 1995, pp. 5-7.

8. "Professional and Business Services", Paul Luyten, paper presented at the Meeting of the Group of Experts on Access to Information Networks and Distribution Channels, UNCTAD/FUINCA, Madrid, 1-3 February 1995.

9. Ibid.

10. Prakash Hebalkar, "Access to and Use of Information Networks and Distribution Channels: Current Experiences, Future Concerns", paper presented at the meeting of the Group of Experts on Access to Information Networks and Distribution Channels, UNCTAD/FUINCA, Madrid, 1-3 February 1995.

11. World Investment Report 1993, p. 122, UNCTAD, ST/CTC/156.

12. Ibid.

13. See note prepared for agenda item 4, TD/B/CN.4/43.

14. S K "Juggy" Pandit, "Wired to the Rest of the World", *Financial Times*, February 1995.

15. Characteristics of such regulations were discussed in Executive Summary of International Chamber of Commerce (ICC) Position Paper, Doc. No. 373 - 30/450 .

16. See American Scientific Magazine, February-March 1995.

17. See World Investment Report 1994, UNCTAD/DTC/10.

18. Paul Luyten, *op.cit.*.

19. Ibid.

20. Malati Tambay Vaidya, "Trade in Media Services: Asia and The Pacific Region", in *Services in Asia and The Pacific, Selected Papers, Volume One*, United Nations, New York, 1990.

21. "Media Services: Considerations Relevant to Multilateral Trade Negotiations", Susan Christopherson and Stephen Bell, in Trade in Services: Sectoral Issues, UNCTAD/ITP/26, January 1990, also TD/14/Supplement.

22. This is one of the factors that led to the last minute crisis in the Uruguay Round negotiations on audio-visual services, see TDR/14/Supplement.

23. Susan Christopherson, "Current Developments and Trade Issues in Audiovisual Services", paper presented at the meeting of the Group of Experts on Access to Information Networks and Distribution Channels, UNCTAD/FUINCA, Madrid, 1-3 February 1995.

24. Les GDS dans l'industrie touristique", etude realisee pour OMT par Olivier Vialle, 1994.

25. See Frank Go, "The Role of Computerized Reservation Systems in the Hospitality Industry", in *Tourism Management*, March 1992, and Patricia Lindsay, "New Hospitality and Tourism Products: CRS supply and Demand", *Tourism Management*, March, 1992.

26. ICAO, Code of Conduct for Regulation and Operation of Computer Reservation Systems, Council of ICAO, 17/12/91, cited in Francois Vellas, "Les systems d'informations et de distribution informatises dans le secteur du tourisme et du transport aerien et les pays en developpement", paper presented at the meeting of the Group of Experts on Access to Information Networks and Distribution Channels, UNCTAD/FUINCA, Madrid, 1-3 February 1995.

27. United States Department of Transport, cited in "Les GFDS dans l'industrie touristique", op. cit.

28. Ibid.

29. Notably TDR/8.

30. Ibid.

31. See B. Gallagher, "The Information Highway: Racetrack or Ring Road?" ,APT Journal, Vol.7 No.1 , Bangkok, January 1995.

32. See document TD/B/CN.4/24.

33. See Business Week, 26 June 1995, pp. 46-49, also Box 2 above.

34. See P. Brusick, M. Gibbs, M. Mashayekhi, "..Anticompetitive Practices in the Services Sector" in Uruguay Round : Further Papers on Selected Issues UNCTAD/ITP/42 Geneva 1990.

35. U.S. Department of Transportation Rule under 14 CFR Part 255, September 1992; Commission Regulation (EC) No. 3089/93, 29 October 1993, No. 3652/93, 22 December 1993; Code of Conduct for regulation and operation of computer reservation systems (CRS), Council of ICAO, 17 December 1991.

36. See "Oh Microsoft, poor Microsoft" Business Week 26 June 1995. Also "Court Revives Microsoft Antitrust Settlement," the Wall Street Journal Europe, 19 June 1995.

37. See "Background on Canadian Information Highway Policy", News Release, Government of Canada, 16 March 1994.

38. Ibid. "Clipper" is a technical standard employing a secret algorithm on a silicon chip built right into network data and voice terminal equipment. For example, it is felt that generalized use of the "Clipper" standard, may provide an unfair advantage for United States software and equipment producers.

39. From the finding of an unpublished survey "How small and medium enterprises use telecommunications equipment in Hong Kong" conducted by the Telecommunications Research Project, Centre of Asian Studies, Hong Kong University, 1994.

40. Recent international experience and sector studies suggest that new service suppliers are unlikely to obtain reasonable interconnection terms from the incumbent operator without regulatory aid. The APT Yearbook 1995, "Privatization and Deregulation", p. 116.

41. Such as that being developed by APEC through the "Human Resources Development" subgroup under the APEC Telecommunications Working Group.

42. ICC Position Paper, op.cit.

43. See Business Week, 26 June 1995.

44. See Box 6.

45. See TD/B/CN.4/24, op.cit.

46. Given that for the first time, on a multilateral instrument, the GATS recognizes the right of host countries to take up their interests of "their" enterprises (i.e. which they own or control) established in a foreign country, in a multilateral dispute settlement mechanism, there would seem to be a possibility for such home countries for the appropriate behaviours of such enterprises.

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Standing Committee on Developing Services
Sectors: Fostering Competitive Services
Sectors in Developing Countries
Third session
Geneva, 25 September 1995
Item 4 of the provisional agenda

IMPACT OF PROGRESSIVE LIBERALIZATION AND OF SERVICE IMPORTS ON THE DEVELOPMENT OF COMPETITIVE SERVICES SECTORS, AND THE DIFFICULTIES FACED BY DEVELOPING COUNTRIES WHICH PREVENT THEM FROM INCREASING THEIR PARTICIPATION IN WORLD TRADE IN SERVICES

Report by the UNCTAD secretariat

CONTENTS

		Paragraphs
	INTRODUCTION.....	1 - 8
I.	EFFICIENT SERVICE SECTORS AND COMPETITIVE SERVICE FIRMS.....	9 - 20
II.	FOSTERING COMPETITIVE SERVICE SECTORS.....	21 - 30
III.	DIFFICULTIES IN EXPORTING SERVICES: MOVEMENT OF NATURAL PERSONS.....	31 - 98
IV.	CONCLUSIONS AND OBSERVATIONS.....	99 - 107

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Introduction

1. Item 3(g) of the work programme instructs the Standing Committee to "assess the impact of progressive liberalization and of service imports in the development of competitive service sectors; and examine the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services".

2. The secretariat has prepared this report with the objective of providing elements which could assist the Standing Committee in its further consideration of this issue.

3. International trade in services has been both a product of, and a contributing factor to, the process of globalization. Transportation, communications and financial services have supported international trade in goods for centuries. However, in more recent years a major stimulus was given to increased trade in services by the phenomenon of service firms following their transnational clients around the world. More service firms were encouraged to offer their services to foreign clients and enter international markets. Developments in communications and information technology greatly accelerated this process, facilitating the operations of transnational service firms and provided a major impetus to the process of globalization.

4. There has been an increasing awareness in developing countries of the importance of a efficient services sector, particularly the producer service sector in the efficient production of goods and other services, the ability to attract foreign direct investment and overall efficiency of the economy as a whole. Many countries, both developed and developing have taken steps to liberalize the service sector by opening up previously protected sectors to foreign competition, a process which has been facilitated by the inclusion of trade in services in the Uruguay Round negotiations and in regional and sub-regional agreements. At the same time there had been a rapid growth of the percentage of the services sector in the GDP and employment in developed countries. One major factor contribution to this growth was the "externalization" of services in the production process. In more recent years, this externalization at the international level has provided a future impetus to the globalization of the production of services and may provide new opportunities for developing countries.

5. On the other hand, developing countries have been preoccupied by the weakness of their service firms, particularly vis à vis enterprises from developed countries which dominate international trade in a wide range of services sectors. The strength of these enterprises in terms of their financial strength, their access to technology, their possession of world wide corporate networks supported by sophisticated information technology provided them with a overwhelming competitive advantage. Furthermore, this advantage was often enhanced by their access to subsidies from their home countries and their perceived resort to anti-competitive practices. The concern of the private sector service firms in many developing countries that they could not compete in the world services market led to their resistance to initiatives to liberalize services at both the multilateral and regional levels. A further concern arose from the increasing recognition of the various strategic aspects of the services sector, and the role of the knowledge-intensive producer service as a mechanism for organizing human capital in such as way as to adapt technological advances to commercial needs and other national objectives.[1] Studies had also clearly indicated that unless liberalization were accompanied by appropriate supportive measures, the knowledge intensive services would tend to concentrate their locations around certain decision making centres.

6. The General Agreement on Trade in Services, incorporated as Annex 1:B to the WTO Agreement was acceptable to developing countries mainly due to its overall structure, which was deemed to respond to their needs. It covers all

services and modes of supply for services (i.e. including FDI and the movement of persons), and is so structured that concessions can be made in sectors where liberalization, especially of access through FDI is judged desirable, and traded off for reciprocal concessions in other areas. It also permits developing countries to qualify such liberalization by maintaining control of strategic sectors, and making market access and national treatment conditional upon the foreign firms benefiting from market access, such as by accepting additional development oriented responsibilities in such areas as transfer of technology and access to information networks and distribution channels. However, Article IV states that such benefits in favour of developing countries will be implemented through "negotiated specific commitments". Thus, given the difficulty in formulating such requests and the imbalance in negotiating strengths, in many cases, developing countries have had difficulty in effectively benefiting from the provisions of GATS in their favour. This may impede the ability of developing countries to fully reap the benefits of globalization and liberalization.

7. This note addresses those elements of the dilemma faced by developing country policy makers. That is (a) what steps should be taken to create an efficient services sector and attract investment to those sectors where such efficiency is deemed most essential, (b) how to ensure that this process is consistent with the strengthening of domestic services firms in sectors deemed strategic or those of potential export strengths, (c) how to overcome difficulties in penetrating world services markets and increasing their share in world trade in services by overcoming current difficulties that prevent developing countries from expanding their participation in world trade in services.

8. Foreign direct investment in services has increased as developed country firms have penetrated and consolidated their position in world markets for services and goods. It would appear, that while, a few developing country firms have been able to expand their participation in world markets in few services sectors through foreign investment, in most cases their participation in the world market for services will have to be accomplished through other modes of supply, notably the movement of persons and through cross-border supply of services through information networks. The former mode is examined later in this paper while the issues relating to access to networks are discussed under agenda item 3 in a separate document.

I. EFFICIENT SERVICE SECTORS AND COMPETITIVE SERVICE FIRMS

9. Governments have become increasingly aware of the costs of an inefficient service sector for the development process. At the same time, the strategic role of services for the development process, involving such elements as national sovereignty, identity and security, a basic infrastructure, the development of human capital and the upgrading of employment opportunities, the competitiveness of national firms in the world market, the location of production and of decision-making functions, has become more evident.

10. Although the situation varies according to different services sectors, developed country firms dominate world trade in services, while most developing countries have not been able to build up a productive and competitive capacity, or to overcome barriers to entry to world markets. The increased participation of developing countries in trade in services would enable them to benefit from their comparative advantage in a number of service sectors and would contribute to their development and to their ability to derive benefits from the globalization process.

A. Competitiveness and efficiency

11. The various policy measures for strengthening of the services sectors in the developing countries have been examined in the documentation prepared under

item 3(a) of the work Programme for the second session of the Standing Committee.[1] These following paragraphs build on this documentation and the subsequent discussions to examine in greater detail the role of liberalization and related policy measures in developing (1) efficient services sectors,(2) competitive services firms.

12. When applied to a firm, the notion of competitiveness refers to the ability of a firm to defend its market or, even better, to expand it through new sales, due to superior products or services, competitive pricing, and an ability to innovate, introduce new technology and bring out new products. The ability of the firm to export and expand its exports might be a strong indication of its competitiveness. However, the domestic market may be growing sufficiently fast for a competitive firm not to be concerned with external markets. On the other hand, the inability to export, or even to compete in their own market may not indicate necessarily that the firms are necessarily inefficient, but that a variety of exogenous factors are placing them at a disadvantage vis à vis foreign firms. Some of these, such as access to technology, and to information networks and distribution channels, and the liberalization of market access in sectors and modes of supply of export interest have been explicitly recognized in Article IV of GATS.

13. When applied to a sector, the notion of competitiveness is more related to the concept of efficiency, it implies that producers of goods and other services can generally count on receiving efficient service inputs from the firms in the sector concerned, permitting they are able to respond reasonably rapidly to new demands from users and consumers and to contribute to a relatively robust growth of the market in part through their ability to innovate and push prices down. The ability of the firms in the sector to compete in the world market is usually viewed as a sign of the efficiency of the sector as a whole. However, the sub-sectors which are most efficient may not be oriented toward exports, but to providing inputs into production in the agricultural, manufacturing or other services sectors. Earlier UNCTAD documentation demonstrated how such producer services in industrialized countries were first externalized into separate entities and then became export oriented, often by following their clients, including their parent firm in their global operations.The conditions for such spontaneous evolution may not be present in many developing countries, so that efficient producer services may have to be obtained from abroad or developed domestically through specific policy measures to this end.[4] Earlier UNCTAD documentation supported by studies by the EC FAST programme and the U.S. Office of Technology Assessment stressed the importance of the "knowledge-intensive" service sector in developing the capacity to innovate and as a source of growth of human capital.[5]

14. Efficiency of the service sector as defined above does not imply anything about the ownership of the firms that occupy the domestic market. However, for a variety of reasons, not the least being the desire to maintain and strengthen indigenous technology, human capital and innovative capacity, governments will endeavour to promote the competitiveness of nationally-owned or controlled firm even vis-a-vis foreign-owned firms located in their territory. In this context, It should be noted that the inclusion of the "commercial presence" mode of supply in the definition of trade in services which provides the basis for the obligations and commitments of GATS, departs from the "residence criterion" of the IMF, and considers sales of foreign-owned and controlled firms in the host country market as "exports of services". The Commitments of each WTO member with respect to commercial presence contained in the GATS schedules, specified the degree to which such "foreign" firms will be permitted to enjoy "access" and "national treatment", for the sectors or sub-sectors included in the Schedules.

Trade and/or Investment

In the preparatory period leading to the launching of the Uruguay Round in Punta del Este, many developing countries firmly opposed the inclusion of trade in services within the agenda of the planned multilateral trade negotiations. The concern was that the inclusion of "trade in services" would be a means of bringing investment policy under GATT rules, linking it to trade concessions, and thus opening the way for possible retaliatory action against their exports in response to certain investment policies. This concern increased with the passage of the 1984 Trade Act in the United States which defined "trade" to include investment for the purposes of Section 301 action. These countries dropped their opposition when it was decided that the negotiations on goods and services would be separated, and governed by different principles. The framework of GATS, in which the commitments for access and national treatment do not extend beyond those listed in the Schedules, has enabled investment to be brought into the trading system in a structured manner.

The question of whether factor movements could be considered as "trade in services" was heatedly discussed during the initial stages of the Uruguay Round, the decision reached at the Montreal Mid Term Ministerial meeting led to a symmetry being established between movement of capital and of persons. The definition of "trade in services" as included in Article I of the GATS includes "commercial presence in the territory of any other member" as a mode of supply of services(as well as the movement of natural persons). The structure of the Schedules of Commitments permits countries to make separate commitments with respect to access and national treatment with respect to such commercial presence on a sectoral or sub-sectoral basis. Thus, according to GATS (notably Article XXVIII(f)(ii) and (m)(ii), purchases of services from enterprises which are owned and controlled by persons of another WTO member in the market of the host country are considered "imports" of services.

This framework has the advantage of permitting countries to structure their concessions to favour FDI in services by liberalizing only the commercial presence mode of supply, generally accompanied by movement of intra-corporate transferees.

Regional groupings, however, have taken a different approach by treating investment globally to apply the same principles to govern investment in both goods and services. In the European Union for example, services are defined residually, as activities which are not covered by the provisions relating to the freedom of movement for goods, capital and persons. The NAFTA approach is less ambitious; exceptions to the rules on investment are stated in a negative list, obligations on services largely deal to what would be considered as "cross border" services in GATS. The obligations with respect to the movement of persons are limited to specific provisions for narrowly defined categories.

The Concluding Remarks of the Chairman at Marrakesh listed among the issues which had been suggested as possible items on the future work programme of the WTO: the relationship between immigration policies and international trade, and trade and investment, suggesting a possible expansion of the scope of the WTO Multilateral Trade Agreements to cover factor movements <u>per se</u>. the TRIMs Agreement also foresees a possible extension of its scope to cover investment and competition policy.

B. Dimensions of service competitiveness

15. **Access to productive resources** (financial capital, machinery and technology, human resources and organizational skills), and **Exposure to competition** are critical determinants of competitiveness and efficiency.

16. Access to productive resources can be a function of the restrictions placed on the functioning of the market that might prevent the optimal flow of resources -- financial, technological, human or organizational. Barriers to competition, may starve sectors for financial capital, technology, human resources or organizational know-how whereas open-market policies might alleviate some of these bottlenecks. Conversely, limitations on market access to productive resources resulting from certain rules and regulations, by impeding access to new productive resources, may have a negative impact on the long term rate of accumulation. On the other hand, the asymmetry in the resources available to domestic firms in developing countries compared to foreign enterprises which enter the market may be such, as the former have no possibility of competing effectively in their own market let alone in world markets. For this reason corrective action may be necessary in the form of specific policies, some of which may be linked to market access, in order to ensure that liberalization effectively leads to access to resources for the domestic services sector. Some of these take the form of general policy measures which are listed in the GATS Schedules. Developing countries' right to attach such conditions are spelled out in Article XIX of GATS.

17. Competition may be furthered by addressing **barriers to market access**, including: (a) those which discriminate among operators based on the origin of their ownership or their geographical location - these are the measures subject to negotiation under Articles XVI (market access) and XVII (national treatment) of GATS, and (b) barriers imposed on the degree to which competition is allowed to occur within a given market irrespective of the origin of economic operators. The latter category may be the result of policy decisions that favour some economic actors over other by restricting the number of operators which are permitted (e.g. licensed) to participate in the market. They may also be the result of deleterious concentration tendencies or anti-competitive behaviour on the part of economic actors (e.g. restrictive business practices (RBPs)) addressed under the agenda of competition policy.

18. The gains from liberalization in terms of contributing to an efficient service sector, stimulating the development of competitive domestic firms capable of competing in the world market can be frustrated, unless complementary actions are taken. It may be necessary to put in place a minimum package of macro-institutional reforms, including (a) an investment code (or an equivalent set of laws and regulations) that defines the country's priorities regarding services activities to be developed, and that provides foreign service investors well-defined protection; and facilitates the flow of FDI (this can be supported by the binding of the treatment of foreign investors in various services sectors as commercial presence commitments in the GATS Schedules), (b) revision of the tax regime that is consistent with the aims of the investment code; (c) an adequate degree of liberalization of foreign exchange regulations (on both the current and the capital accounts) to allow for the repatriation of earnings and the possible withdrawal of investment by foreign service providers; (d) a set of immigration regulations consistent with the needs of foreign service providers to recruit transfer of their personnel; (e) the strengthening of intellectual property laws and their enforcement in line with the TRIPs Agreement (including measures to prevent the anti-competitive abuse of such rights).

19. The national studies, conducted by UNCTAD, have presented the framework for a review of the extent to which some of the components of the macro-institutional suggested are missing, or are weak, or, in the case of services, tend to inadvertently discriminate against domestic service production. The experience of studies carried out by UNCTAD, including both the CAPAS[6] and

the EFDITS projects[7] suggests that imperfections in the macro-institutional framework, including the tendency to discriminate against service providers, are quite frequent and call for attention.

C. Competition policy reform

20. A further consideration, drawn particularly from some of the case studies carried out under the EFDITS project, is that a relatively liberal investment and trade environment does not yield the expected benefits without adequate competition policy in place. Distorted competition in their domestic market closes down access to new entrants (be they foreign or even new domestic operators.) Collusive practices, highly-cartelized industries or distribution systems, differences in performance requirements resulting from public policies (e.g. tax policy or regulatory policy) favouring some providers over others (not necessarily based on the nationality of their ownership), as well as others anti-competitive barriers to entry may simply limit the contestability of markets to the point of undoing the potential effects of liberalization. Domestic competition policy is likely to have a major impact on the extent to which liberalization will bear fruit in the domestic markets of developing countries; while, the competition policies of their trading partners will have a major impact on the effectiveness to which their service exporters are able to enter foreign markets.

II. FOSTERING COMPETITIVE SERVICE SECTORS

21. In the context of its technical assistance programmes at the national and sub-regional levels, UNCTAD undertook a major effort to assist developing countries to conduct economic and policy audits of service sectors. The national study exercise can serve both to address the extent to which inefficiencies in the service sectors are being transmitted to users in the services, manufacturing and agricultural sectors, so as to reduce their competitiveness. The national studies conducted by UNCTAD have given considerable emphasis to the results of questionnaires sent to users as an input into effective policy formulation, including the position to be taken in services trade negotiations. One approach has been to focus on both the supply of services and the demand of services by some goods-producing sector. The aim of the interviews was to assess the organization and operational characteristics of the enterprise, its supply and demand of services, the degree of externalization, its insertion in the national and international markets, and the impact of existing policies and the liberalization and deregulation process. The main questions of these surveys included: (a) the extent to which services had been internalized and externalized; (b) the recourse by the firm to imported services at different stages of production; (c) the services with key incidence in the competitiveness of the firm in national and international markets[8], economic policy instruments[9] and (c) other factors contributing to the competitiveness of the firm[10].

22. Some studies prepared by UNCTAD[11] concentrated on the supply and demand of producer services in order to determine: (a) the role of services in the national economy; (b) use and recourse to producer services by the domestic industry; (c) the supply of producer services; and (d) development perspectives of producer services. On the demand side, the survey focused on the identification of main factors determining the use of producer services by the different size of enterprises from the domestic industry in selected sectors[12]. The services demanded were grouped in five categories namely: administrative services, technical services, market-related services, computer-related services and training services. The main questions of the survey were related to inquire the degree of internalization and/or externalization of those services, main obstacle to its efficient delivery and, the characteristics of the externalized demand including through imported services and other mechanisms such as DFI, franchising, intra firm trade, etc. On the supply side the surveys were oriented to determine the main problems facing services suppliers and the impact of ongoing policies in their development and in capitalizing export opportunities.

23. Another recent example are the studies conducted in ten African countries in the context of the UNCTAD CAPAS programme[1]. The outcome of this programme should lead to concrete proposals for domestic policy reforms for strategies to include services in regional integration schemes, and negotiating positions, in the context of the WTO. Special attention is given to a few strategic service areas in all CAPAS counties, because of the role of those sectors as infrastructure to development or because of their importance for export earnings. These are: trade infrastructural services, financial services, telecommunications services, and labour services. The programme is intended to encourage the development of a policy formation process that stresses consultation with and participation from actors outside Government.

24. The various national studies underlined the fact that many services are consumed as packages of services rather than in isolation. Accordingly, it is important to review the efficiency with which a particular service that enters the package is provided in relationship to the efficiency, with which others that contribute to the same package are offered. The studies should identify the extent to which policies carried out in one sub-sector of the complex may end up undermining the objectives of the policies established in other subsectors.

25. The national study exercise also takes account of the views of domestic private firms as to the policy actions that are required to allow them to more effectively confront foreign competition in their home market and to developed the capacity and corporate structures to penetrate export markets. These largely involve questions of financial resources, market mechanisms, macro economic policies, with respect to monetary, trade, fiscal and credit policy; policies to develop human capital through public education, on-job-training; policies to modernize and upgrade basic infrastructures, such as transportation and communications infrastructures, creation of entities to provide essential services not available in the country; changes in the institutional and regulatory framework (taking in account the fact that some regulations inadvertently favour foreign over domestic suppliers); specific export strategies, resources development, access to technology, and the role of foreign providers. Some of the corrective mechanisms which have been identified and translated into policy measures such as: (a) direct financial support, (b) fiscal and credit incentives, (c) modification of the regulatory system, (d) incentives for the externalization of locked-in-knowledge and, (e) the establishment of service centers and/or training centres.

26. One objective is to ensure that FDI in the service sector not be simply a result of seeking "bargains" as governments privatize formerly state-owned services, nor buying up distribution networks in order to control the market for goods or services, nor "cream skimming" by concentrating on high profit niches of the market. The challenge is to orient it to establishing new and more efficient service production that will have a positive effect on the efficiency of other sectors, secure to transfer technology to domestic firms, and open new distribution networks abroad for their exports.

Service liberalization and regulation

27. Liberalization does seek to lower barriers to competition on efficiency grounds, but it does not deny the existence of conditions that call for regulatory intervention. Article VI of GATS recognizes this even where specific commitments have been made.

28. Two primary economic conditions justify regulatory intervention: *natural monopoly or asymmetric information*. Natural monopoly may be the result of very large costs of entry in the industry or of a special advantage acquired through access to a uniquely strategic location (e.g. harbours). Asymmetric information is the second major reason for regulation. The objective is to protect the least informed (usually the final user or the consumer) from the best informed (usually the producer) and from the monopoly power the latter can extract from this

in-balance. Banking, professional, medical, educational services are classic examples of industries where regulation is justified on this ground. Improved approaches to regulation may protect consumer interests at lower costs than in the past and may open up wider opportunities for more extensive competition within a regulated environment.

29. The challenge for policy-makers when pursuing liberalization is often to find the proper balance between greater competition and sufficient regulation. This is particularly true in the case of services which are most of the industries where situations of natural monopoly or imperfect information exist. Of particular importance in this context is the issue of what economists call "public goods" i.e. those goods or services for which the benefits derived by users (other firms or consumers) during their consumption far out-pace the return derived from their production and sale by their producers. By virtue of its position in the market, a monopolist (whether deriving its position from a situation of natural monopoly or imperfect information) is in a position of moving up the demand curve and, accordingly, pricing out certain consumers. Regulation may be particularly needed in such cases.

30. Developing countries have embarked on domestic reform and liberalization in some of their service sectors characterized by natural monopoly and/or asymmetric information and have had to confront some of these issues. This is illustrated, for example, by the case of telecommunications in the ten countries that participate to the CAPAS project (Benin, Burundi, Ghana, Guinea, Kenya, Nigeria, Senegal, Tanzania, Uganda and Zimbabwe), several of which are LDCs.[1] By now, seven out of ten countries have separated postal services from telecommunications services. The other three are planning to do so. Four countries have separated the regulatory functions from the public telecommunications operator. The other six countries are planning to do so or are in the midst of doing so. Seven of the ten countries have opened part of the sector to competition. The choices made by the countries range from joint-venture with private sector firms, with the public operator remaining as the majority stake-holder, all the way to fully-owned private ventures. Three of the countries have let in foreign providers. What the experience of these countries shows unambiguously is that domestic reform and liberalization go hand in hand with the establishment of a strong regulatory framework.

III. DIFFICULTIES IN EXPORTING SERVICES: MOVEMENT OF NATURAL PERSONS

31. Among the difficulties faced by developing countries which prevent them from increasing their participation in world trade in services are the regulations which affect the temporary movement of persons as service suppliers, as recognized in item 3(h) of the Work Programme.

32. As has been noted above the process of globalization and liberalization places a premium on skill, knowledge, and information tending to exacerbate inequalities in that those lacking these factors are penalized more severely than in the past and tend to be marginalized from the benefits of globalization. The acquisition, deployment and use of human expertise has become increasingly necessary in the production and trade in goods and services. The globalization of production has prompted a global search for expertise, and has created pressures for the liberalization of regulations restricting the temporary movement of highly skilled persons, primarily within the international network and career system of TNCs or for involvement in specific projects of limited duration. This phenomenon is apparent in national immigration legislation and legislation as well as the Commitments made with respect to this mode of supply in the GATS Schedules. The Schedules of both developing and developing countries indicate a willingness to enter into commitments with respect to the movement of persons in the professional, managerial and technical category. This approach is also reflected in those regional agreements, such as NAFTA, which do not provide for the free movement of persons in general, but facilitate for entry of skilled persons and intra-corporate transferees. At the national level,

recent amendments of immigration legislation has tended to provide additional opportunities for the temporary entry, and even the permanent immigration of highly skilled persons. On the other hand, the entry of low and unskilled labour is becoming increasingly restricted, although, there are important temporary movements of such workers.

33. The participation in the exchange of high level skills which takes place routinely among developed countries, is a manner for developing countries to derive greater benefits from the globalization process. It provides access to technology and a means of developing competitive strengths for increasing their share of world trade in services. It is essential that skilled persons from developing countries and firms from developing countries are able to participate in this process on the same basis as those from developed countries.

34. At the Second Session of the Standing Committee, based on the note presented by the secretariat and the ensuing debate, the secretariat was instructed to continue to focus on barriers to trade in services carried out through the temporary movement of natural persons, including identification of specific entry requirements and criteria and how economic needs tests and other screening procedures can be made more predictable both in order to protect the integrity of specific commitments in this area and to enhance the ability of developing countries to take advantage of specific commitments with respect to this mode of supply.

35. The movement of natural persons has been recognized in the WTO General Agreement on Trade in Services (GATS) as a "mode of supply" for trade in services as defined in the Agreement, specific commitments with respect to this "mode" have been included in the Schedules of Commitments annexed to GATS, the context for the negotiations on movement of persons has been laid out in the Annex (to the GATS) on the Movement of Natural Persons Supplying Services under the Agreement. In addition, the Ministerial Decision on Movement of Natural Persons provides for the continuation of negotiations on further liberalization of natural persons to be concluded six months after the entry into force of the Agreement Establishing the WTO (i.e.by 30 June 1995).[7] The objective of these continued negotiations is to achieve higher levels of commitments under GATS and to provide for a balance of benefits.

MODES OF SUPPLY

As described above, the "modes of supply" approach was designed to bring what was essentially factor movement within trade obligations.[8] At the insistence of developing countries, the GATS Agreement was structured so as to provide a degree of symmetry in the obligations as between the movement of capital and the movement of labour, thus ensuring a balance in the concessions for the countries interested mainly in the latter factor and to ensure that the movement of persons would be covered by the provisions on progressive liberalization.

The draft of the Annex on Movement of natural persons was prepared in Mexico in April 1990. It was circulated among like minded countries and a revised version was submitted to the Group of Negotiations on Services as MTN/GNS/W/106 jointly by Argentina, Colombia, Cuba, Egypt, India, Mexico, Pakistan and Perú.

Questions are being raised as to whether the mode of supply approach is conducive to further liberalization, the negative list structure of NAFTA is presented as an alternative approach to further liberalization, (although the negative list approach had been proposed and rejected during the Uruguay Round). Another approach would be that adopted within the European Community where services is considered as a "residual" sector in the sense that it deals with activities that are not covered by the rules on the free movement of persons and capital, i.e. the modes of supply approach could be discarded if there were multilateral rules governing the movement of persons or investment. The negative list approach in NAFTA does not apply to the movement of natural persons; unlike the EU, where services are "residual", there is no commitment to the eventual free movement of persons. One of the main arguments for not applying the negative list in the GATS was that governments were unwilling to make open-ended commitments since the number of regulations and commitments would make it difficult for most governments to analyze the potential impact of market access and national treatment commitments for all such regulations.[11] In addition, there is the sheer volume of the material that would have to be listed. NAFTA has only three members, notwithstanding which the negative lists constitute several hundred pages of text. To apply this method to the over 120 members of the WTO, would dramatically increase the 27,000 pages of the Marrakesh Final Act. In addition, these legislations do not exist in the official languages of the WTO. Future negotiations would be facilitated, however, by a database on legislation and regulations affecting trade in services, such as MAST.

36. As has been noted, the liberalization of the movement of persons has not been treated as a component of "trade in services" in the context of most regional integration agreements, many of which treat factor movement separately and sometimes in a symmetrical manner. The experience with more intense liberalization within regional agreements provides useful guidance as to how certain problems may be overcome in efforts to liberalize trade in services conducted through this "mode" in the multilateral context of GATS.

37. The discussion presented in this note is supported by four analytical tables summarizing the bindings offered by selected industrialized countries, (Australia, Canada, the European Communities and its Member States, Japan, New Zealand, Sweden, Switzerland and the United States): respectively for business visitors, personnel engaged in setting-up a commercial presence, intra-company transferees, and personnel in specialty occupation (Tables 1 through 4). These tables were prepared using the schedule of commitments of each country, supplemented by information additional information on the temporary migration regime (laws and implementing regulations) in force in eight developed countries: Australia, Canada, the Federal Republic of Germany, Japan, Sweden, Switzerland, the United Kingdom and the United States. Additional research was conducted to update that earlier information for several of these countries (especially the United States, Canada, Australia, Japan, Sweden, Switzerland) or to obtain information for countries not researched earlier (New Zealand).[12]

A. Regulating temporary entry

38. UNCTAD documentation has noted that in regulating the entry of persons who fall in the category of natural persons supplying services as defined in the GATS Annex, most countries distinguish between (a) business visitors, who stay for a duration ranging up to a few months maximum, who are not gainfully employed in the host country, and (b) and temporary workers who receive payment from an individual or organization in the host country. Highly skilled persons can, of course fall into either category.[13]

39. Regardless of the terminology used, the main differentiating factor is whether or not the person involved will be receiving remuneration from an entity resident in that country, a factor which will generally call for his or her obtaining a work permit, even if the person remains employed by a foreign firm. The issuance of visa is conditional upon obtaining such a work permit, which in turn, is subject to a series of conditions which have to be met by the employer and by the foreign employee. These can relate to the qualifications and skills of the persons concerned, duration of entry, levels of payment, respect of social obligations, etc. In most cases, however, these conditions are subordinate to an employment condition, (i.e. "economic needs", "employment" or "labour market" test) under which temporary entry is conditioned upon a determination that no resident of the host country is available and qualified to carry out the same assignment.

B. Economic needs tests and quotas

40. All countries use economic needs test to limit access of specialty personnel and some even for intra-corporate transferees. Furthermore, a number of them use quotas for that same category. Economic needs tests or quotas would not appear to be applied to business visitors. Countries generally exclude the recruitment of foreign workers if they are to be used to replace nationals in a situation of labor strike or lock-out.

41. Economic needs tests are drafted with differing degrees of precision, are applied with different degrees of transparency and are administered by different entities. The following examples illustrate this situation.[20]

42. Under subsection 19 (1) of **Canada**'s Immigration Regulations, 1978 (Revised 1 November 1984), the Immigration Office must issue an employment authorization to all applicants seeking temporary entry except those listed under that same subsection of the regulations. Employment authorizations are issued following the issuance of an employment validation by Ottawa's Department of Human Resources Development (HRD). The process involved in obtaining an employment validation from HRD is *not the object of a published regulation* but, rather, comes in the form of *unpublished administrative policy guidelines*. While such policy guidelines must be applied fairly to all applicants and are explained in a booklet on the hiring of foreign workers made available to any potential employer of foreign workers, they can be reviewed and changed at the discretion of the Administrative authority (in this case HRD.) The guidelines that are presently applied were last reviewed three years ago.

43. Canada's guidelines for employment validation of temporary entrants work as follows: Employers wishing to hire foreign workers must provide Canada Employment Center (CEC) with details of the job offer and of the reasonable efforts they have made to identify suitably qualified and available Canadians (This includes proof of having advertised the job, having liaised with the usual occupational associations and hiring halls where such workers might be found, as well as indications of low unemployment level in that occupation in the geographical area where the job will be located.) In addition, the wages and working conditions must be at a level which Canadians would normally accept. Finally, employers must demonstrate to the CEC that the foreign worker can create and maintain employment in Canada, provide training or transfer specialized knowledge to Canadians, or help to strengthen the company's competitive position in the international market place.[21] Canada approved roughly 24,000 requests for temporary work permits in 1993. This is somewhat less than the total number of applications filed -- approximately 35,000.[22] The difference between the two numbers is nearly all accounted for by applications discontinued typically because the hiring process was ended or the application was not a bona fide application.

44. Employment certification by the Department of Labor is required in the **United States** for applicants under the H1A, H1B, H2A and H2B categories. In addition, under U.S. law, the H1B, H2B, and Ps visas are subject to numerical quotas. To obtain an employment certification, the employer must submit a labor condition application to the Department of Labor. Regulations of the labor condition application process are published in *Consolidated Federal Regulations, 20 CFR Ch. V* (4-1-94 Edition) and where updated most recently on January 13, 1992 (*Federal Register, Vol. 57, No.8*, Monday January 13, 1992, pp.1316-1338).

45. A labour condition application for H1-B applicants is shown in Appendix I. On the whole the employer's petition for labor certification requires that the applying employer attests that "(1) the employment of the alien will not adversely affect wages and working conditions of similarly employed U.S. workers and (2) that there are not sufficient U.S. workers who are able, willing qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work."

46. The labour certification process used by the United States does not require that the Department of Labor verifies the truth of the statement attested to by the employer in its application. It is a complaint-driven enforcement process. The applying employer must maintain sufficient documentation proving that its application is consistent with the relevant law and regulations. However, only if a complaint is filed by a presumably injured party does the Department of Labor take step to verify the truth of the statements made by the employer. (The law sets penalties in case the employer is shown to have violated the intent of the law and implementing regulations.)

47. Thus far, quotas for H1-B applicants have never been fully met. In 1992, 57,125 H1-B new admissions were approved; in 1993, 61,591; and in 1994, 60,179. Few bona fide applications are turned down.

48. As a result of NAFTA, the U.S introduced a new TN professional visa classification for Canadian and Mexican Professionals (For Canadians, the TN category replaces the TC professional visa classification that had been introduced as a result of the Canada U.S.FTA) provided that the professional meets the criteria laid out in Appendix 1603.D.1 of the NAFTA, visas are issued without applying an economic needs test. There are no numerical limits on the number of TN visas issued each year to Canadians. For Mexicans, there is an annual limit of 5,500 new TN professional visas. Renewal and extension of TN visas do not count, only new ones are counted. If the limit is reached before the end of the calendar year, applications are turned down. So far this has not happened. Also, the quota for Mexicans is to disappear over time and to be replaced by unlimited access. There is no restriction on a Mexican whose admission under a TN visa might have been turned down because the full quota has been reached for that year to seek entry under an H1B visa; or simply to wait until the beginning of the following year to enter under a TN visa.

49. Employers sponsoring people for entry as specialist in **Australia** are required to provide documentary evidence of having tested the labour market without success except under special circumstances. The latter mostly are situations where the Department of Employment has determined that there is an occupational shortage in Australia. The requirements to meet a labour market test are not unlike those laid out in the Canadian and U.S. systems including respecting prevailing wage rates and working conditions and proving that the sponsor has tested the labour market for available Australian workers. The relevant regulatory text is reproduced in Appendix II to this report. Like the Canadian system, the burden of proof is on the employer at the application stage and the documentation provided is subject to a verification by the Commonwealth Employment Service. In Australia, 19,258 visas were issued to specialty personnel in 1991-92.

50. In **France**, work permits are issued by the Prefect of the department in which the foreigner wishes to carry out the activity; who must consider the present and future employment situation in the occupation requested by the applicant and in the geographical area where the applicant wishes to carry out the occupation in question. However, citizens of a number of countries in addition to EU member states are exempt for work permits. The employment test is grounds for refusal of work permits for most categories (e.g. seasonal workers, employees on secondment, researchers, entertainers, fashion models etc) with few exceptions (e.g. trainees, installers, cinema artists etc.).

51. The restrictive impact of economic needs tests is apparent from the increases in temporary movement that take place when they are not applied. For example, in the United States entries under the H1 visa,(i.e. persons of "distinguished merit and ability") quintupled between over 1978-88, (it was subsequently revised and divided into sub-categories). The inflow of temporary workers from Canada has increased from 13,000 to 23,000 since the signing of the Canada/United States Free Trade Agreement.

52. Economic needs tests could thus present a less onerous barrier to trade in services if:

(a) their scope were reduced, i.e. that fewer occupational categories were made subject to the test, this might be accomplished by adding further sectoral or occupational specificity to visa categories,

(b) the criteria were made more transparent, so that rejections could be challenged,

(c) that legal provision be made for such challenge both at the national level and in GATS (GATS Article VI:2 would seem relevant in this context)

(d) these criteria were bound in the GATS Schedules to ensure against more stringent criteria being introduced in the future.

(e) they were supplemented by a "minimum access commitment" in the form of a quota under which the economic needs test would not apply, additional entries could be made above the quota but subject to the test, "current access commitments" could preserve the levels negotiated.

(f) it should be recalled that the GATS safeguard clause remains to be negotiated (Article X:1), such safeguard mechanism could be designed to replace economic needs tests.

53. Transparency is a prerequisite to being able to assess more fully if and how certain economic needs test may be made more predictable, more stable and less burdensome.

C. Binding economic needs tests

54. The above analysis would suggest that in cases where the requirement of an economic needs tests is indicated in the Schedule of Commitments, future negotiations could aim at ensuring that the criteria would not become more restrictive in future. There would also be a need to remove any possible ambiguities about the nature of such scheme and its bound status. For example, schemes that fall under the rubric of "policy guidelines" would have to be described in the Schedules of Commitments.

55. Even if the economic needs tests were bound in the Schedules against being more restrictive, such tests would remain subject to some administrative authority deciding at some point whether efforts of the employer to identify a qualified national have been sufficient and/or unemployment rates in the

occupation and geographical area of the applicant are sufficiently low to warrant its hiring of a foreigner.[29] The issue then is how to reduce the degree of subjectivity associated with that decision process. Binding "trigger" unemployment rates does not seem a very realistic option as usually applications are judged against occupational unemployment rates measured at the sub-national (e.g. a French "Department") or even municipal level. The approach used in the United States, based on a post-complaint verification system used under the U.S. labour certification process removes the need for any Administrative authority to decide on these issues until the relatively rare instance when the Administrative authority is called upon to investigate a complaint.

56. The effect of labour market tests is not unlike that of quotas. The difference with a traditional quota, however, is that the quota value of the labour market test is not immediately known (though its quota-equivalency might be computed), can change with general economic conditions of the importing country, and can be adjusted continuously and unpredictably by the Administrative authority of the importing country. The next step to stabilize the conditions of temporary entry for categories subject to labor market tests then might be to provide for quotas below which the economic needs test would not be applied (i.e. analogous to a tariff quota), such quotas might be fixed at current access level.[30]

57. The level of quotas could be based on factors that take into account the current level of temporary entries in each country.[31] Under such system entry permits delivered under a quota would have to be issued by the competent Administrative authority on a first-come-first-serve basis or some similar non-discriminatory scheme. "Minimum access" quotas could be applied for specialty categories under which no economic needs test would be imposed, any entries in excess of the quotas would be subject to the economic needs test. Where relevant bilateral or regional agreements existed, these could be preserved as "current market opportunity" quotas.

D. Other criteria for temporary entry

58. In addition to the employment or labour test, a variety of other conditions associated with the granting of work permits could present barriers to access to markets of service suppliers.
These include:

(a) Restrictions on eligibility of firms to obtain work permits

59. This is essentially a national treatment issue, it appears that in some countries foreign firms, even when established in the importing country) are not allowed to recruit foreign labour in certain instances, it could be examined in the context of "commercial presence" commitments.[32]

(b) Short duration of validity of permits

60. In some cases, the duration of work permits has been considered to be too short. The discretionary power left to the administrative authorities when issuing visa might permit discrimination among nationals from various countries by granting different lengths of stay among different applicants otherwise equally qualified.

(c) Ambiguous definitions of categories

61. This has been considered to constitute a problem in certain regimes. Some countries impose additional skills and competency requirements for various types of temporary entry permits based on educational level of the applicant and/or the length of working experience in the occupation. As schooling and training systems differ from country to country - with some countries emphasizing longer formal education and others more extensive company-based vocational education

- these may favour access for certain countries' suppliers.

(d) Minimum wage requirements, and overlapping social legislation

62. These refer to a different aspect of national treatment requirements, in the sense that the employers of foreigners have to conform to a variety of statutory requirements of an essentially social nature. In some instances, particularly when applied to specialists entering for short periods, such requirements are perceived as protectionist in that they artificially undermine the advantage of using foreign personnel for such tasks even when otherwise in conformity with immigration regulations.Requirements on the employer to pay the minimum wage, (even when the employment contract had been entered into in another country) as well a social and other charges, could undermine the competitive position of developing countries suppliers.

63. In the case of intra-company transferees or personnel in specialty occupations, nearly all countries require that the level of remuneration be "comparable to that of wages and salaries prevailing in the country for like national employees." This might be seen as undercutting one of the key comparative advantages of developing countries - namely labour costs. Particularly at current exchange rates, salaries in some developing countries are such that senior staff are paid at levels that might be considered below the poverty level in some European countries, such requirements could restrict trade and discriminate in favour of developed countries.

64. There is also a reverse aspect of the problem where limitations apply primarily to either intra-company transferees or personnel in specialty occupations, in terms of their access to social benefits. They include limitations with regards to access to medical care insurance schemes, old age insurance (pension) schemes, the right of temporary entrants to bring along their spouses and dependents, access to subsidized education schemes, subsidized housing schemes, income tax treatment and other benefits.

65. On the other hand, there is serious concern in developed countries that temporary entry provisions can be used to escape fiscal and social obligations. The EU has devised the concept of "posting", under which an employee working in another member state or his employer, is issue a certificate by his national authorities certifying that he continue to be subject to the national laws of his home country until the end of his posting; thus the social charges are paid in his member state and not in the host state. The "posting" concept, however, could be applied in other circumstances.

(e) Fees and charges

66. Other measures affecting temporary entry are fees and charges that are made, either directly to the business visitor[11], or on the employer seeking work permits.[12] The use of requirements that are less easy to assess are filing requirements asked from individuals upon application for temporary entry. It is possible that some countries may apply requirements that are either unduly burdensome or discriminatory with respect to nationalities of the persons concerned.

(f) Licenses and recognition of qualifications

67. The acceptance of the entry of a person based on the skills indicated in the immigration regulation does not provide the supplier with access to the market where such is regulated by professional licensing in the case of accredited professions. This is less of a problem to access when the person concerned is proving services to his own firm, which would have locally licensed persons to provide the accredited service;however, in other occupations, such as nursing, physical access is meaningless, and may even not be permitted without the recognition of qualifications.

68. The criteria for the assessment of whether a person has the skills and qualifications necessary to conform to those specified in the particular immigration category would seem to be a major issue warranting more discussion.

69. Other requirements might include processing time of applications. Excessively lengthy periods might undermine the ability of applicants to seize upon a business opportunity. Dealing with these types of requirements will demand first much greater transparency on the part of countries regarding not only published immigration laws and implementing regulations but also unpublished or unadvertised administrative rules. Once such requirements become better known, it should be relatively easy to deal pragmatically with burdensome requirements. Again, implementing a mechanism for reporting and negotiating away such excessive requirements would seem the most appropriate to dealing with this issue.

E. Reflection of commitments in national regulations

70. The document prepared for the Second Session of the Standing Committee under item 3(h) of the work programme addressed the characteristic of national regimes governing the temporary movement of persons. The following paragraphs examine the extent to which these have been reflected in the multilateral GATS Commitments. For a select group of countries, the corresponding national legislation and regulations have been examined.

71. The Commitments on the movement of natural persons normally include entry requirements for three main categories of personnel -- business visitors, personnel engaged in setting-up an establishment presence, and intra-company transferee -- and, a fourth category, namely personnel in specialty occupations. In other words, for persons who are in demand internationally. Only a few countries, thus far, have made commitments in the area of personnel in specialty occupations.

(a) Business visitors

72. Commitments with respect to business visitors tend to be far more limited than the regimes currently in place in individual countries. The more restrictive nature of the binding originates from the definition used to describe "business visitors" (a few countries are also slightly more restrictive in the duration of the temporary stay for business visitors.) All countries use a definition of business visitors in their schedule which reads like "persons not based in the territory of the country and receiving no remuneration from a source located within that country, who are engaged in activities related to representing a service supplier for the purpose of negotiating for the sale of the service of that supplier where: a) such sales are not directly made to the general public and b) the salesperson is not engaged in supplying the service".[15] In contrast, most countries have a current statutory definition of business visitor, which, when applied to service providers, allows for a wider range of activity and, in effect, some degree of direct provision of a service to the public. For example, lawyers, accountants, management consultants, software specialists, installers of industrial machinery, and countless others routinely travel on business visitor visas to perform short term assignments for clients. As such, they would meet the source of remuneration requirement, when there is one. Their firms are paid for the services rendered, but the service-person himself or herself receive no remuneration from a local source while visiting the importing country. Furthermore the statutory definition of the business visitor is usually sufficiently broad or sufficiently vague to allow this type of short-term service delivery.

(b) Personnel engaged in setting up an establishment

73. Commitments with respect to persons engaged in setting-up a commercial presence tend to be somewhat more limited than the regime in force in individual countries under existing laws and implementing regulations (not unlikely the

duration of stay is shorter). However, it is not clear that, in practice, this presents significant scope for increasing the restrictiveness of the regulations.

(c) Intra-Corporate Transferees

74. Commitments with respect to intra-company transferees come the closest to constituting full bindings of the regime currently in place in each country. However, a few countries require a longer period of prior employment with the firm for an employee to be eligible as an intra-company transferee compared to that they use under their current statutes."

(d) Specialist Personnel

75. All developed countries have provisions under their current immigration regime (laws and implementing regulations) allowing for the temporary hiring and residency of foreign specialist personnel by local firms (domestically- or foreign-owned) irrespective of the fact that such personnel may or may not already be employed by the firm in another country (i.e. qualifies or not as an intra-company transferee.) However, among the countries examined, only Australia and the United States offer a full binding of their current regime with respect to at least one major category of such type of personnel: in Australia, this is a binding of the laws and regulations that apply to the so called "Specialists"; in the United States, of the statutes for "Professionals Performing Services in Specialty Occupations".

76. The New Zealand Commitment contains a partial binding of its current regime and allows for intra-company transfers of "Specialist Personnel" above and beyond the usual categories of intra-company transferees (i.e. executives, senior level managers and senior specialists). As Australia and the United States, those are subject to an economic needs test (see below). However, this particular commitment is limited to specialists transferred as intra-company transferees whereas the Australian and U.S. offers allow for straight temporary hiring of non intra-company transferees (as do New Zealand current statutes). New Zealand also makes a commitment for intra-corporate "installers and servicers", which extends the definition of business visitors to a specific group of individuals. Specifically, entry is limited to three months, there are no explicit limitations on the source of income for business visitors, which, otherwise might restrict the scope of this particular offer.

77. Japan, like New Zealand, binds the intra-company transfer of specialist personnel in six professional occupations (four classes of law professionals, accountants, and tax specialists.) But this binding is limited to intra-company transfers whereas the existing Japanese regime for these classes of specialists is not restricted to such movements.

78. Under the rubric "Professionals", Canada makes a commitment allowing a limited list of professionals to deliver services for a period of up to 90 days. Like New Zealand, this is little more than an extension of the definition of Canada's 'business visitor' category, which Canada was able to accommodate without needing to make any change to its current statutes (immigration law and implementing regulations)." Similarly, Canada's statutes do not have explicit limitations on sources of income for business visitors which, otherwise, might restrict the scope of this particular offer.

F. Improvement of commitments

79. In this context, it should be noted that, the commitments of the countries selected for study fall short of constituting binding of statutes (immigration laws and implementation regulations) currently in force in those countries with respect to the temporary movement of natural (service-providing) persons. There is thus some margin for improving the concessions without actually modifying the

relevant regulations. Of particular interest here would be a deeper binding of commitments with respect to business visitors and to specialty occupation categories.

80. First, in the case of business visitors the key issue is to ensure that the bound commitments provide the ability of delivering a relatively wide range of services through short term business visits,(as have as Canada and New Zealand). This could largely be achieved by removing limitations that have been introduced by way of the particular wording used to define business visitors, from the schedules of commitments

81. Second, in the case of specialty occupations,some countries (e.g. Australia and the United States) have been able to bind their current statutes for a major category of specialty personnel. This approach might be followed by other countries, which all have relatively similar statutes in effect. Some bindings could be extended beyond one category of specialty personnel to cover other categories applicable to service providers and covered under current immigration statutes.

82. Nearly all the countries studies have provisions regarding the temporary entry of corporate trainees, in many cases not subject to the employment test, these provision might also be bound.

83. In addition, in many of the countries, temporary entry for various kinds of specialty personnel (in addition to high-level managers and specialists qualifying under the intra-company transferee category) fall under more than one category, each with its own set of statutes. Thus, for example:

- In the United States, there are temporary entry regimes for nurses (H1A visas), for temporary agricultural workers (H2A visas), for temporary non-agricultural workers (H2B visas), for representatives of information media (I visas), for "aliens" of extraordinary ability or achievement (O1 and O2 visas), for athletes and entertainers (P 1, P2 and P3 visas) all of which are relevant under the GATS agreement."

- In Australia, of the 24 major classes of temporary resident visas and entry permits at least nine (including Class 414 tabled by Australia) are relevant to the temporary entry of specialty (service-providing) personnel. These are: Class 418 (Educational Personnel), Class 419 (Visiting Academic), Class 420 (Sports people), Class 422 (Medical Practitioner), Class 423 (Media and Film Staff), Class 424 (Public Lecturer), Class 428 (Religious Worker)."

- In Japan, in addition to persons setting up a commercial presence and intracompany transferees, employment permits for temporary working visas can be issued to 13 categories of persons including: professors for research and teaching at the college-level; artists; religious workers; journalists; legal and accounting service providers (provided they qualify under the appropriate laws defining the scope of their activities); providers of medical services; researchers; certain primary and secondary school teachers; engineers; specialists in humanities and social sciences; entertainers and sports people; a selected list of skilled workers including cooks, architects and civil engineers, and crafts workers;"

- Switzerland has a system of temporary work permit including so-called year-permits (so-called B-Permits), short-term permits and seasonal permits (so-called A-Permits). Each makes use of quotas. Their scope is not limited to inter-corporate transferees but applies also to what might be defined as "specialty personnel."

- The United Kingdom has a regulatory regime that allows the issuance of work permits to licensed professionals, administrative and executive staff, highly qualified technicians with specialized experience, key workers with expert knowledge, entertainers and sports people, certain personnel in hotel, catering, household worker, and hospital auxiliary occupations. These categories are subject to a labour market needs test and, in the case of the latter group (hotel, catering, household worker and hospital auxiliary occupations), to quotas;"

84. The same applies to other developed countries; greater security for trade in the services in question could be achieved through a binding of all categories relevant to the movement of specialty personnel, not only the selected categories contained in the scheduled by a few developed countries.

G. Commitments offered by developing countries

85. All developing countries have made horizontal commitments on movement of natural persons. The market access offered by developing countries through this mode of supply is often wider than that offered by developed countries. The categories of natural persons included in the offers usually cover business visitors, intra-corporate transferees (i.e. directors, managers, specialists and technicians) and persons responsible for establishment. The presence of the intra-corporate transferees is often extendable for periods up to 5 years. Some offers include additional categories of persons, in particular professionals (e.g. Argentina (independent professionals), Brazil (highly qualified professionals working for a local or foreign company), India (professionals engaged by a juridical person in India as part of a service contract in the field of physical sciences, engineering or other natural sciences), Philippines (foreign natural persons may supply a service subject to labour market test), Malaysia (professionals recognized and registered by Malaysian professional bodies). A few of the horizontal commitments cover access of all types of personnel on the basis of a determination of non-availability of suitable local personnel e.g. Philippines, Cyprus, Jamaica, Sri lanka. The independent or contract based natural persons are usually granted visas of short periods up to a maximum period of one year.

86. Many of the commitments stipulate limitations to market access by setting a quota, requiring an economic needs or labour market test. The quota is usually expressed as a limit on the percentage of foreign personnel that may be employed in an enterprise and sometimes it is accompanied by a percentage restriction on the overall share of total wages paid by an enterprise (this percentage varies between 15 to 30 percent of the total wages paid by an enterprise).The quota on the number of foreign employees is usually generous and ranges between 10 percent (i.e. Egypt) to 50 percent (i.e. Pakistan)of the employees of an enterprise or a certain category of personnel. The quotas sometimes distinguish between the ordinary and highly skilled employees e.g. the Columbian offer provides that 10 percent of the ordinary employees and 20 percent of the skilled employees could be foreigners. Many schedules provide for training, or employment of local personnel, or provision of new technology and increase in productivity, in particular as a counterpart for increasing the quota for foreign employees e.g. Malaysia, Ghana, Guatemala, Brazil, Cuba.

H. Taking advantage of specific commitments

(a) Transparency in commitments

87. Tables 1 through 4 summarizes the bindings offered by the countries selected for this analysis." This is done in terms of six specific market access criteria plus one residual "other limitations" criterion. The six specific market access criteria are: definition of the class of temporary entrants,

duration of temporary entry, source and/or level of wages and remuneration, limitations relating to the displacement of nationals (economic needs test), numerical quotas, and additional skill levels and competencies requirements. The residual "other limitations" applies to any other market access criteria such as application filing requirements (application fees, birth certificate, proof of income tax filing, letters of endorsement, etc.) as well as national treatment limitations.

88. Typically, offers of individual countries with regards to the temporary entry and stay of natural persons read "unbound except for measures concerning the temporary entry and stay of nationals of another member who falls into the following categories" (or some variation thereof). Thereupon, countries list the specific categories of temporary personnel for which the temporary entry regime is bound together with some explicit limitations bearing upon their entry. In other words, countries bind entry requirements for each designated category at the level of restrictions and limitations at which entry is currently in force in the country, save for additional restrictions made explicit in their schedule. The latter may further narrow the scope of the offer compared to the regime in force in the country for the particular category.

89. This approach to the scheduling of commitments would not seem to provide adequate transparency. Except for the definition of the category of personnel and perhaps restrictions with respect to duration of stay and/or remuneration, the offers are generally silent on other conditions and limitations that might apply to a particular category of personnel -- particularly those pertaining to the displacement of nationals, the use of quotas, additional qualifications with respect to skills and professional competencies or other market access and national treatment limitations. Only by gaining direct knowledge of individual national immigration legislation, relevant implementing regulations and administrative rules and procedures can anyone be in a position to truly assess the value of the commitment.

(b) Transparency in national laws and regulations

90. Beyond the obvious language barrier, access to legal and regulatory texts of individual countries can be painstaking. These are recorded in National Gazettes and Registers which may not be easily accessible to the public, especially in a foreign. Furthermore, printed laws or implementing regulations are not always sufficient to define the current level of requirements, conditions and limitations applying to a given type of entry. Some (or much) discretionary power might be left in the hands of the Administrative authorities (typically Immigration and Customs, Justice, Labor, possibly Health) to set rules. More often than not Administrative authorities refuse making such rules available in writing.

91. Such information is less difficult to obtain in the case of some countries, (notably Australia, Canada, New Zealand, United Kingdom, United States in this sample) which tend to be explicit and detailed in their legislation and published implementing regulations with respect to the scope of coverage and relevant limitations and conditions. This may suggest that the discretionary power left to Administrative authorities tends to be narrower, than in other countries which tend to be less explicit in their published laws and implementing regulations.

92. Some countries provide detailed publications outlining the immigration laws and regulations extended to assist the person concerned or his employer. The series of publications provided by the Australian Department of Immigration provide an excellent example of how governments can provide transparency[15].

93. The integrity of specific commitments in the GATS would thus be enhanced through greater transparency in both the drafting of the Commitments themselves and in the application of the relevant laws and regulations. The effective implementation of GATS Article III could contribute to this objective, notably

if, pursuant to GATS Article III:4. Members could request the published relevant legislation, implementing regulations, and administrative rules that define conditions of entry and national treatment. Publications of administrative rule is particularly important in this respect. Failure to do so simply leaves discretionary power to a country to change rules over time allowing it to tighten up entry requirements at will, making it difficult for exporting countries to defend their rights under the Agreement. Furthermore, failure to make explicit the full universe of conditions applying to temporary entry and stay that a country has bound under the GATS allows it to apply different rules for nationals from different countries. This, in turn, could result in de facto departures from the most-favoured-nation obligation, although GATS recognizes that the sole fact of requiring of visa for natural persons of certain Members and not for those of others, shall not be regarded as nullifying or impairing benefits under a specific commitment.

94. One of the problems faced in the negotiation of GATS in the Uruguay Round was the lack of an information base on barriers to trade in services anywhere comparable to that which had been developed for trade in goods. The MAST data base being developed by UNCTAD" could assist in future negotiations, however, it might also be useful for individual countries to supplement this information by following the approach adopted by some contracting parties in GATT for drawing up the original GATT Inventory of Non-Tariff Barriers, i.e. by seeking information from the private sector, in this case business persons, who could to report to their Trade Authorities specific examples of difficulties encountered, which have frustrated their ability to supply services,' as they seek temporary entry under the conditions set out in the GATS Annex.

95. The "enquiry points" to be established under Article III of GATS should provide a means for obtaining more information on the various regulations governing the movement of natural persons. Of potentially greater significance are the "contact points" to be established by developed countries under Article IV:3 which will respond directly to requests from the private sector, it would appear crucial that such contact points provide information on regulations affecting the temporary movement of persons as well as the on the occupations where a demand for such services is deemed to exist in the country and where employment or labour market tests can be expected to be applied in a liberal manner. Furthermore, the provision for tribunals for the review of administrative decisions affecting trade in services could make a major positive contribution in this context, if immigration regulations governing the temporary movement of persons were effectively brought under its scope.

(c) Service teams and project personnel

96. Although, the emphasis, both in the GATS commitments, at the regional level and in national legislation has been on facilitating the temporary movement of skilled persons, there is still a significant movement of lower skilled workers, particularly on a seasonal basis, and often in the form of service teams. Historically the use of the temporary movement of complete service teams from exporting to importing country as a means to deliver a service has been one way by which countries have secured needed services. Schemes involving the temporary entry of service teams into Western European countries, usually from developing countries, have been used mostly in agriculture (seasonally), and construction and as well as shipping services. Germany, in particular, has a system allowing it to enter into agreements with service firms from a number of Eastern European countries. Entry under those agreements is normally limited to two years. In the United States, such schemes have been most important in agriculture. Japan is now making some use of service teams in the construction industry. In the Gulf countries, such schemes tend to cover an even wider range of sectors including education, medical services, private security, construction, manufacturing and yet other industries. As of the late 1990, Egypt had nearly two million workers in that region, many employed under such schemes."

97. The benefit of schemes permitting temporary entry of service teams are numerous. From the point of view of exporting countries, they allow entry irrespective of skill level in contrast to the entry visa schemes discussed earlier in this report. From the point of view of the importing country, they are an alternative to other recruiting schemes that might be more prone to a large amount of slippage from temporary to permanent migration. One of the main impediment to progressive liberalization under this mode of supply, particularly when lower skilled persons are involved, is the concern that such liberalization measures could lead to abuse, either by the employers who might use these provisions to circumvent other obligations, i.e. such as minimum wage or social security obligations, or by the persons moving across borders who might seek to remain in the host country illegally. The experience with the application of regional and bilateral agreements could be instructive in this case.

98. It could be helpful to identify effective safeguards that can be used to protect importing countries against permanent and/or illegal immigration. These may be safeguards that are imposed on firms from the importing country that hire the services of foreign-originating service teams (e.g. sanction and penalty schemes) or safeguards placed on exporters of service teams (e.g. safety bond schemes). The experience of regional and bilateral agreements would also be instructive in this regard, with a view to identifying selectively sectors where countries might make a GATS commitment to carefully crafted schemes allowing for the temporary entry of service teams.

IV. CONCLUSIONS AND OBSERVATIONS

99. Liberalization of trade in services is an essential prerequisite for the participation of developing countries and countries in transition in international trade in services and their integration into the trading system.

100. Liberalization measures would be more effective towards achieving these goals if they were preceded by a national study or "audit" which would identify priority sectors and assess the potential impact of liberalization. Such liberalization should be accompanied by a package of supporting measures to attract investment to those sectors identified as priority in the sense that efficiency, stimulated by competition, would have the greatest positive impact on the competitiveness of other sectors and firms. Such liberalization could eventually be bound into the GATS Schedules of Commitments, if possible, in return for reciprocal commitments by other countries.

101. The national study should also identify the policy measures needed to assist domestic firms to develop the capacity to compete and to negotiate with foreign firms, such as in the context of joint venture. Accompanying legislation could set out the regulatory framework for such supportive measures and, in particular, seek to eliminate aspects of regulations which may discourage the development of competitive service firms.

102. Governments may wish to bring to the attention of the Standing Committee case studies of experiences with liberalization and its translation into competitive service firms and increased service exports.

103. Most developing countries may find it difficult to derive the expected benefits from Article IV of the GATS given their weak negotiating position in dealing with developed countries and with TNCs. Therefore, it would seem appropriate that the international community accept certain additional principles which would provide for supportive actions to assist the developing countries to acquire a competitive capacity in the production and export of services and to overcome difficulties in penetrating world markets for services. To this end, such supportive actions could include the following:

(a) developing countries undertaking programmes to liberalize their services sectors would be provided with financial and technical assistance to

enable their firms to acquire the capacity necessary to compete in the domestic and export markets;

(b) a set of principles could be drawn up to set out how the objectives of Article IV of the GATS could be achieved in practice, including guidelines for foreign enterprises.

104. The freer international movement of personnel from developing countries is essential to their effective participation in the globalization process and their integration into the world economy and the international trading system. Governments should accept a set of principles aimed at addressing specific problems hindering such movement, within the context of existing immigration laws and regulations and the GATS Schedules of Commitments. The MAST data base should concentrate on including measures affecting temporary movement and member States should consider active collaboration to this end.

105. The experience with the liberalization of the movement of persons within regional integration schemes should be studied in detail, as a possible guide to future action at the multilateral level.

106. Governments may wish to undertake surveys in order to identify the problems met by their service exporters with greater precision so that remedial action could be proposed.

107. On the bases of this information, a consolidated study on regimes for temporary access of services suppliers could be prepared.

1. See discussion in UNCTAD VIII, Analytical Report by the UNCTAD Secretariat to the Conference TD/358, January 1992 UN sales Publication E.92.II.D.3

2. See document TD/B/CN.4/42.

3. Notably in TD/B/CN.4/23; the more theoretical aspects of liberalization were examined in UNCTAD/DTC/7 prepared in collaboration with the World Bank.

4. See TD/B/CN.4/23.

5. Notably TDR/8.

6. The CAPAS programme is a capacity-building programme of technical assistance to African countries focusing on services, initiated by UNCTAD in 1992. Presently, ten African countries benefit from this programme: Benin, Burundi, Ghana, Guinea, Kenya, Nigeria, Senegal, Tanzania, Uganda and Zimbabwe.

7. EFDITS is a joint project on the Expansion of Foreign Direct Investment and Trade in Services initiated by the Programme on Transnational Corporations of the United Nations Conference on Trade and Development and the World Bank to assist developing country policy makers in the area of services.

8. Telecommunications,transport, ports, warehousing, customs, utilities.

9. Exchange rate, fiscal treatment, trade laws, customs control, support to exports, image of the country as exporter and financing.

10. Investment capacity, technological capacity, research and development of products, production capacity, entrepreneurial capacity, training of personnel, volume of the supply of exports, price, quality and timely delivery.

11. See for example, Bonamy J. and Catrice F. "La dynamique des services aux producteurs dans le développement économique tunisien", August 1989. Mexico, Una Economia de Servicios, UNCTAD/ITP/58.

12. Included, textile, construction, chemical products, metal mechanics and food-processing industry.

13. The following national studies have been carried out: Les services au Benin; Les Services au Burundi; Services in Ghana; Les Services an Guinee; Services in Kenya; Services in Nigeria; Les Services au Senegal; Services in Zimbabwe. (Reference to document numbers)

14. See, for example, Simon Moshiro and Brahima Sanou, *Telecommunications Policy and the GATS Negotiations: Methodological Note for a Case Study of Selected African Countries*, a report to CAPAS and ITU presented at the CAPAS Phase II Kick-off Meeting, Harare, 16-17 March 1995.

15. These negotiations have been extended to 28 July 1995.

16. The idea of negotiating commitments with respect to Modes of Supply (or "delivery") was developed in UNCTAD/TDR/8 (1988). The idea seems to have been first mentioned in UNCTAD/RAS/CB.7.

17. See Cezar Feketukuty "International Trade in Services: An Overview and Blueprint for Negotiation", Ballinger, Cambridge, MA, U.S.A., 1988.

18. See Supporting Paper entitled "Information on the Temporary migration regime (Laws and Implementing regulations) in force in selected developed countries".

19. See TD/B/CN.4/24.

20. It should be noted that economic needs tests are not confined to this mode of supply but are used to limit both investment,(not only FDI) and trade in goods.

21. Based on information provided by the Canada's Department of Human Resources Development.

22. Data provided by the Canadian authorities.

23. Quoted from 20 CFR Ch. V (4-1-94 Edition) page 524.

24. Data provided by the U.S. Department of Labor.

25. The criteria relates to proof of citizenship and prèsentation of documentation demonstrating that the professional will be engaged in a business activity at a professional level and describing the purpose of entry.

26. *Procedure Advice Manual, Temporary Resident Visas and Entry Permits, Number 8: Specialists (Class 414)*, Department of Immigration, Local Government and Ethnic Affairs, 2nd Edition, March 1990, p. 6, item 5.3.

27. Data quoted in SOPEMI, *Trends in International Migration*, 1993 Annual Report (Paris: OECD Publications, 1994).

28. Source: OECD, The Temporary Employment of Foreigners in France and the United Kingdom, Note by the Secretariat, Paris, 1994.

29. Requirements such as whether applicants enter at prevailing wage rates and working conditions lend themselves relatively easily to objective analysis. Average occupational wage rates and working conditions are usually known through government surveys and those surveys can be used as objective reference points.

30. For example, using the figures quoted earlier in this section, somewhere in the vicinity of 65,000 in the United States for H1B visas; around 25,000 to 30,000 in Canada for work permits of specialty personnel; around 20,000 for Class 414 visas in Australia.

31. For example, the United States admits approximately 60,000 new H1-B applicants per annum and assuming that, on average, H1-B visa holders remain in the country three years, there is a total of perhaps, at most, 180,000 holders of H1-B visas in the country at any one time,i.e.about 1.5 tenth of a percentage point of a labour market of nearly 120 million employed.

32. Source: OECD, The Provision of Services and the Movement of Labour in the Countries of the European Community, Note by the Secretariat, Paris, 1994.

33. For example, fees as high as $65 for a three day visit have been reported.

34. For example, in France employers are required to pay a average fee of around FF970 for the granting of a work permit and an additional charge is imposed is the permit is extended.

35. This particular definition is drawn from the schedule of the United States, but those of other developed countries are similar.

36. For example, the Schedule of the United States provides that the intra-corporate transferee has had to have been employed at least one year by his company before transfer to the United States, in the current regulations, the employee has had to have been employed at least one continuous year during the previous three years preceding his/her entry into the United States.

37. (Class 414 in Australia's *Procedure Advice Manual* which is the reference document that summarizes Australia's 1958 Migration Act and its Implementing Regulations).

38. (HIB classification in the U.S. *Consolidated Federal Regulations*, 8-CFR Chapter 1, Part 214, 1-1-94 Edition).

39. Canada amended in Subsection 19(1) of its 1978 Implementing Regulations as revised on 1 November 1984) to explicitly accommodate the category of "service providers." Subsection 19(1) lists individuals allowed to temporarily enter Canada without needing an employment violation (from Immigration) and an employment authorization (from Human Resources), including individuals entering either as business visitors or as intra-company transferees. The old text in Subsection 19(1) made reference only to providers of goods, not services. The text was changed to read "providers of goods and services."

40. For a detailed discussion of these categories, see *Trade in Labor Services and Temporary Movement of Personnel, op.cit.* in footnote 1. There have not been any significant changes in U.S.law or regulations since that report was prepared. The categories are defined in the *Immigration and Nationality Act of the United States (Reflecting Laws Enacted as of April 1, 1982)* (Washington, D.C.: Government Printing Office, 9th Edition, April 1992). Implementing Regulations are summarized in U.S. *Consolidated Federal Regulations*, 8-CFR Chapter 1, Part 214, (Washington, D.C.: Government Printing Office, 1-1-94 Edition.)

41. These classes are defined in Australia's *Procedure Advice Manual* which is the reference document summarizes Australia's 1958 Migration Act and its Implementing Regulations. See also, *Trade in Labor Services and Temporary Movement of Personnel, op.cit.* in footnote 1. There has not been any major changes in Australia's laws and regulations since that report was prepared.

42. See Visa Information (Ministry of Foreign Affairs, Foreign Nationals Affairs Division, January 1991.) This document is a partial English-language compilation of visa requirements under Japanese Immigration Law and Implementing Regulations provided by the Ministry of Foreign Affairs.

43. See, *Trade in Labor Services and Temporary Movement of Personnel, op.cit.* in footnote 1.

44. See Supporting Paper, op.cit..

45. Since December 1989, the Department of Immigration, Local Government and Ethnics Affairs of Australia issues a Procedures Advise Manual describing conditions of the entry of people to undertake business negotiations and discussions in Australia according to business classes. This manual describes the legislative framework, as well as the specific legislative provisions governing the grant of a visa or entry permits in the specific business classes.

46. See Supporting Paper.

47. Under NAFTA, Canada, Mexico and the United States have set-up a mechanism for bi-annual consultations among the trade and immigration authorities of the three countries to review possible frustrations encountered by business persons in their temporary movement and implement remedies that are consistent with the intent of the NAFTA agreement.

48. For more on this issue, see Thierry Noyelle and Beth Redfield, *Internationally Trade Labor Services in Africa*, a Report to UNCTAD (New York: Columbia University, The Eisenhower Center, Working Paper #91-05, May 1991).